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Defendant SHAKEY'S PIZZA ASIA
VENTURES, INC. and Third Party Defendants
CINCO CORPORATION, PC
INTERNATIONAL PTE LTD., and SPAVI
INTERNATIONAL USA, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SHAKEY'S PIZZA ASIA VENTURES,
INC, a Philippines corporation,

Plaintiff,

v.

PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING, LLC, a
Delaware limited liability company; GUY
KOREN, an individual; POTATO
CORNER LA GROUP, LLC, a California
limited liability company; NKM CAPITAL
GROUP, LLC, a California limited liability
company; J & K AMERICANA, LLC, a
California limited liability company; J&K
LAKEWOOD, LLC, a California limited
liability company; J&K VALLEY FAIR,
LLC, a California limited liability
company; J & K ONTARIO, LLC, a
California limited liability company; HLK
MILPITAS, LLC, a California, limited
liability company; GK CERRITOS, LLC, a
California, limited liability company; J&K
PC TRUCKS, LLC, a California limited

Case No. 2:24-CV-04546-
SB(AGRx)

The Hon. Stanley Blumenfeld, Jr.

**SECOND AMENDED
JOINTLY FILED CLAIMS,
COUNTERCLAIMS, THIRD
PARTY CLAIMS, AND
AFFIRMATIVE DEFENSES
TO BE TRIED**

Complaint Filed: May 31, 2024
Trial Date: August 26, 2025

1 liability company; and, GK CAPITAL
2 GROUP, LLC, a California limited liability
company and DOES 1 through 100,
3 inclusive,

4 Defendants.

5 PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING LLC, a
6 Delaware limited liability company;
POTATO CORNER LA GROUP LLC, a
7 California limited liability company; GK
CAPITAL GROUP, LLC, a California
8 limited liability company; NKM CAPITAL
GROUP LLC, a California limited liability
9 company; and GUY KOREN, an
individual,

10 Counter-Claimants,

11 v.

12 SHAKEY'S PIZZA ASIA VENTURES,
13 INC, a Philippines corporation,

14 Counter Defendant.

15 PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING LLC, a
16 Delaware limited liability company;
POTATO CORNER LA GROUP LLC, a
17 California limited liability company; GK
CAPITAL GROUP, LLC, a California
18 limited liability company; NKM CAPITAL
GROUP LLC, a California limited liability
19 company; and GUY KOREN, an
20 individual,

21 Third Party Plaintiffs,

22 v.

23 PC INTERNATIONAL PTE LTD., a
Singapore business entity; SPAVI
24 INTERNATIONAL USA, INC., a
California corporation; CINCO
25 CORPORATION, a Philippines
corporation; and DOES 1 through 10,
26 inclusive,

27 Third Party Defendants.

Pursuant to Dkt. No. 254, the parties submit the following causes of action, counterclaims, third party claims, and affirmative defenses as at issue for trial.

I. PLAINTIFF SHAKEY'S PIZZA ASIA VENTURE'S INC. ("SPAVI" OR "PLAINTIFF): CLAIMS TO BE TRIED BY A JURY.

1) Claim 1: Trademark Infringement Against All Entity Defendants

(15 U.S.C. § 1114), regarding the three registered marks at issue: (1) U.S. Reg. No. 5900257: the word mark "Potato Corner" ("Word Mark"); (2) U.S. Reg. No. 6088456 protecting "World's Best Flavored French Fries (the "Slogan Mark"); and (3) U.S. Reg. No. 3760041 (the "Logo Mark") protecting:



a. Element No. 1: the Word Mark, Slogan Mark, and/or the Logo Mark (all collectively, the "Marks") are valid and protectible trademarks:

1. This element is not disputed

b. Element No. 2: Plaintiff owns the Word Mark, Slogan Mark, and/or the Logo Mark

1. This element is disputed.

2. Nature of Dispute: Legal and Factual

3. Plaintiff's Legal Position: Defendants do not dispute that the registrations for all three Marks (Trial Exhibit Nos. 1, 3, and 5) identify Cinco as the registrant and the first to use each of the three Marks, nor do Defendants dispute that the Deeds of Assignment attached to the notices filed with the USPTO (Trial Exhibit Nos. 4 and 6) confirm that, unequivocally and without exception, the entirety of these Marks were sold and assigned to Plaintiff, along with all the goodwill arising out of or associated with the Marks. Defendants also do not dispute the testimony of Seller

1 (Cinco) and Buyer (SPAVI) that the Deeds are accurate in
2 every way, that the sale and assignments were
3 comprehensive, without carve outs, and fully
4 consummated. Instead, Defendants take internally
5 inconsistent positions that are contradicted by various legal
6 doctrine, including: **(1) Licensee Estoppel**, wherein PCJV
7 (as well as all other Defendants that operate or own a
8 business using the Marks), as a licensee of Cinco (and
9 subsequently SPAVI) through the implied license or even
10 the unsigned Master License Agreement claimed by
11 Defendants to be binding “may not set up any adverse
12 claim in it as against its licensor.” *Pac. Supply Co-op. v.*
13 *Farmers Union Cent. Exch. Inc.*, 318 F.2d 894, 908 (9th
14 Cir. 1963). **(2) The Lanham Act provisions rendering**
15 **Defendants’ positions contrary to federal law**, in that
16 Defendants’ attempts to claim that the first time they used
17 the Marks should be credited to them, even though they
18 were acting as licensees of PCJV or Defendants’ claim of
19 ownership of the goodwill created through PCJV’s stores
20 (operated as licensees) inured to Defendants’ benefit
21 contradicts 15 USC § 1055 (as well as the unsigned Master
22 License Agreement they claimed to be adhering to this
23 whole time). **(3) Law of the case**, in that Defendants’
24 challenge to Plaintiff’s ownership of the Marks based on
25 Defendants’ first use as licensee of Cinco has already been
26 resolved by this Court and the Ninth Circuit, which held
27 that “it is undisputed that Cinco registered the three marks
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1 at issue then transferred ownership of those marks to
2 SPAVI.” The Ninth Circuit then explicitly rejected PCJV’s
3 theories that it was the first to use the marks domestically
4 by holding that “in the licensor-licensee context, a
5 licensee's use of a trademark inures to the benefit of the
6 licensor-registrant” (*Shakeys Pizza Asia Ventures, Inc. v.*
7 *PCJV USA, LLC*, No. 24-7084, 2025 WL 1431270, at *1
8 (9th Cir. May 19, 2025)), thus rendering, for example, any
9 allegation by PCJV of its use as a licensee as being proof
10 of its first use cannot serve as a basis to challenge SPAVI’s
11 ownership because this theory has been considered and
12 rejected by the Ninth Circuit in this case, as has also the
13 various other legal theories of Defendants offered during
14 the injunction stage that are based on the same facts
15 asserted during the injunction and rejected by this Court.
16 Even at the injunction stage, rulings by this Court and the
17 Ninth Circuit “on pure issues of law, however, are
18 binding.” *Ranchers Cattlemen Action Legal Fund United*
19 *Stockgrowers of Am. v. U.S. Dep't of Agr.*, 499 F.3d 1108,
20 1114 (9th Cir. 2007); *see, e.g. Arizona v. California*, 460
21 U.S. 605, 618 (1983) (citing the rule as being “when a court
22 decides upon a rule of law, that decision should continue to
23 govern the same issues in subsequent stages in the same
24 case”). **(4) Authorities cited by Defendants do not**
25 **support their position, including *Sengoku***, which
26 presented a distinguishable case – a foreign manufacturer
27 that was the first to use versus the domestic distributor that
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1 was the registrant, whereas in this case the foreign licensor
2 is both the first to use and the registrant – and yet,
3 Defendants continue to cite it as supporting their claim of
4 ownership or rights, and it does not. **(5) The merger**
5 **doctrine,** wherein the purchase and sale agreement
6 between Cinco and SPAVI selling and agreeing to assign
7 to SPAVI the Potato Corner marks and brand merge into
8 the undisputed and unequivocal deeds that are notarized
9 and ratified by Buyer and Seller (Trial Exhibit Nos. 4 and
10 6) such that these Deeds would control if there was any
11 inconsistency between the purchase and sale agreement
12 and the deed (there is not, as those agreements said nothing
13 about and acknowledged no rights held by any of the
14 Defendants), such that Defendants’ speculative theory that
15 the purchase and sale agreement between Cinco and
16 SPAVI reserved some rights for Defendants cannot even
17 be presented to the jury given that the Deeds do not reserve
18 anything for Defendants – a doctrine that applies in federal
19 intellectual property cases and renders any questions as to
20 what the deal between SPAVI and Cinco actually said,
21 irrelevant. *See, e.g., Palos Verdes Corp. v. Hous. Auth. of*
22 *Los Angeles Cnty.*, 202 Cal. App. 2d 827, 836 (1962)
23 (explaining that “if the language of a deed is plain, certain,
24 and unambiguous, neither parol evidence nor surrounding
25 facts and circumstances will be considered to add to,
26 detract from, or vary its terms or to determine the estate
27 conveyed); *B. F. Goodrich Co. v. A. T. I. Caribe, Inc.*, 366
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1 F. Supp. 464,467 (D. Del. 1973) (applying this concept in
2 the intellectual property context). **(6) Standing**, in that
3 none of the Defendants were party to the transaction
4 between Cinco and Plaintiff, and as such, have no standing
5 to question whether the Deeds (notarized and ratified)
6 represent the actual deal between Cinco and SPAVI or
7 some other imagined reservation of their rights supposedly
8 contained in the purchase and sale agreement that did not
9 make it into the Deeds (a fantasy that did not happen). *See,*
10 *e.g. Imperial Residential Design, Inc. v. Palms Dev. Grp.,*
11 *Inc.*, 70 F.3d 96, 99 (11th Cir. 1995) (agreeing that "that,
12 where there is no dispute between the copyright owner and
13 the transferee about the status of the copyright, it would be
14 unusual and unwarranted to permit a third-party infringer
15 to invoke [the requirement of a writing memorializing the
16 status] to avoid suit for copyright infringement."). **(7)**
17 **Judicial estoppel**, in his sworn allegations in the Prior
18 Governance Action (*Cinco Corporation et. al. v. Guy*
19 *Koren et. al.* Los Angeles Superior Court Case No.
20 BC701075), Koren admitted repeatedly including in
21 verified allegations that Cinco "owned the Potato Corner
22 brand" (Trial Exhibit No. 1421, ¶ 26), an allegation that
23 Cinco **admitted** (Trial Exhibit, No. 1422, ¶ 26.), such that
24 PCJV and Koren must be barred from making a "factual
25 assertion" that Cinco did not own the brand "which
26 directly contradicts an earlier assertion made in the same
27 proceeding or a prior one.'" *United States v. Lence*, 466
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1 F.3d 721, 726 (9th Cir. 2006) (citing and quoting *Russell v.*
2 *Rolfs*, 893 F.2d 1033, 1037 (9th Cir.1990)).

3 4. Defendants' Position Statement: The ownership issues
4 framed by the Proposed Final Pretrial Conference Order
5 (Dkt. No. 244), the Memoranda of Contentions of Law and
6 Fact (Dkt. Nos. 197 and 199) and pleadings are: (1) senior
7 use under *Sengoku*, including actual first use (restructure in
8 2009) and lawful first use, *see CreAgri, Inc. v. USANA*
9 *Health Services, Inc.*, 474 F3d 626, 630 (9th Cir. 2007); (2)
10 continuous use under 15 U.S.C § 1055; (3) assignment in
11 gross; (4) acquisition of "attached" rights by the PCJV
12 USA Parties and Plaintiff's corresponding denial of
13 acquiring burdens attached to the trademarks; (5) naked
14 license; and (6) priority favoring Defendants based on
15 other defenses. Plaintiff's proffered statement is non-
16 responsive. It is a combative, inappropriate and false
17 narrative of Defendants' position, record evidence,
18 preliminary rulings and the ownership issues for trial as set
19 forth in the Proposed Final Pretrial Conference Order (Dkt.
20 No. 244), Memorandums of Contentions of Law and Fact
21 (Dkt. Nos. 197 and 199) and pleadings. "The court's
22 preliminary injunction did not make final factual
23 determinations; no party moved for summary judgment;
24 and the jury needs to be instructed on the claims asserted
25 in this case." Dkt. No. 254 at 2. Plaintiff's unpled defenses
26 of infringer standing, licensee estoppel, judicial estoppel,
27 and merger (parol evidence) doctrine are not issues for trial
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1 per the Proposed Final Pretrial Conference Order (Dkt. No.
2 244) or Plaintiff's Memorandum of Contentions of Law
3 and Fact (Dkt. No. 199). Plaintiff's asserted "legal
4 positions," which seek to avoid a trial on the merits, are
5 also based on inapplicable authority (or no authority at all)
6 and misstate the record. For these reasons, including
7 because Plaintiff's "legal positions" go beyond identifying
8 the actual ownership issues set for trial, Defendants will
9 address them if or when they arise after the evidence on
10 ownership is presented at trial

11 5. Plaintiff's Supporting Evidence: Notarized Deeds signed
12 by seller and buyer; USPTO filings including Registrations
13 and Assignments, testimony of Gregorio (Plaintiff's CEO),
14 Magsaysay (Cinco's CEO), Koren, Ybanez (Plaintiff's
15 General Counsel), FDDs, Franchise Agreements.

16 6. Defendants' Supporting Evidence: documents and
17 testimony including and related to (1) Defendants' senior
18 use and quality control of Potato Corner in the United
19 States; (2) the superseding partnership agreement; (3) DLA
20 Piper's notification of Cinco Corporation's unlawful use of
21 Potato Corner in the United States; (4) the State of
22 California's Department of Business Oversight's Order
23 sanctioning PCJV USA, LLC for Cinco Corporation's
24 alleged prior use of Potato Corner in the United States; (5)
25 the superseding and restructure agreement confirmed by
26 Guy Koren and Jose Magsaysay vesting ownership of
27 Potato Corner in their partnership; (6) the joint venture
28

1 agreement vesting co-ownership of Potato Corner in the
2 United States in PCJV USA, LLC; (7) control over Potato
3 Corner in the United States being vested with and exercised
4 by PCJV USA, LLC; (8) Potato Corner USA being affixed
5 to Potato Corner in the United States; (9) consumer
6 association of Potato Corner in the United States with
7 PCJV USA, LLC, to whom complaints, if any, were
8 lodged; (10) PCJV USA, LLC's creation, development and
9 hold over the goodwill of Potato Corner in the United
10 States for over a decade; (11) absent a license agreement,
11 which SPAVI Parties disavow, PCJV USA, LLC's use
12 inured to its own benefit; (12) Cinco Corporation's lack of
13 control of Potato Corner in the United States for over a
14 decade; (13) Defendants' objection to Plaintiff's alleged
15 acquisition of U.S. trademark rights in breach of Cinco
16 Corporation's fiduciary duties and PCJV USA, LLC's joint
17 venture agreement ("JVA") and First Amendment thereto
18 ("First Amendment") given that Plaintiff was disavowing
19 the existence of a license agreement; (14) Cinco
20 Corporation assigned U.S. Potato Corner trademarks to
21 Plaintiff without the goodwill associated with the
22 trademarks; (15) Plaintiff's lack of control of Potato Corner
23 in the United States after it allegedly acquired the U.S.
24 trademarks; (16) Defendants' Membership Interest
25 Purchase Agreement ("MIPA") with Cinco acquiring all of
26 its Interests in PCJV USA, LLC and all rights "attached"
27 thereto unencumbered by a need for a license from any
28

1 third party; (17) Plaintiff's denial of stepping into Cinco
2 Corporation's shoes and acquiring the licensing burdens
3 attached to the U.S. trademarks; and (18) Plaintiff's
4 suppression of ownership evidence.

5 c. Element No. 3: Defendants used the Word Mark, Slogan Mark,
6 and/or the Logo Mark in interstate commerce after May 31, 2024:

7 1. This element is undisputed.

8 d. Element No. 4: Defendants' use of the Word Mark, Slogan Mark,
9 and/or the Logo Mark in interstate commerce after May 31, 2024,
10 was without the consent of Plaintiff and in a manner likely to
11 cause confusion among ordinary consumers as to the source,
12 sponsorship, affiliation, or approval of the services.

13 1. This element is disputed.

14 2. Nature of Dispute: Legal and Factual

15 3. Plaintiff's Legal Position: As for absence of consent, given
16 the absence of any ownership rights, Defendants must
17 locate some right as a licensee of the owner (SPAVI).
18 Defendants offer two documents proffered as agreements
19 that bind Cinco to a perpetual license. Neither work as a
20 matter of law. First, they offer the unsigned October 10,
21 2010, document containing terms for a Master License
22 Agreement (Trial Exhibit No. 11), which this Court (and
23 the Ninth Circuit) have reviewed. Both have interpreted it
24 as a matter of law, concluding that it is an unsigned draft
25 (as Koren's testimony has confirmed) and illusory because
26 the licensor is given no consideration for this purported
27 agreement. The unsigned document cannot, as a matter of
28

1 law, have bound Cinco, even through implied contract law,
2 because Cinco did not do anything in furtherance of that
3 document to imply its assent. Moreover, multiple times
4 after October 10, 2010, documents were signed stating that
5 Cinco would be expecting a 30% royalty recovery. Second,
6 Plaintiffs point to § 3(g) of an Amended Joint Venture
7 Agreement (and its predecessor the Joint Venture
8 Agreement) – Trial Exhibit Nos. 8 and 9 – which this Court
9 has already interpreted to constitute an agreement to agree,
10 in the future, with Cinco on a license agreement. As the
11 Ninth Circuit said in affirming this conclusion, “the AJVA
12 contained an agreement to enter a *future* Master License
13 Agreement, not a “perpetual license” like PCJV claims.”
14 *Shakeys Pizza Asia Ventures, Inc. v. PCJV USA, LLC*, No.
15 24-7084, 2025 WL 1431270, at *1 (9th Cir. May 19, 2025)
16 (citing *First Nat'l Mortg. Co. v. Fed. Realty Inv. Tr.*, 631
17 F.3d 1058, 1065 (9th Cir. 2011) (“[A]n ‘agreement to
18 agree,’ without more, is not a binding contract.”). This
19 interpretation of the AJVA and JVA is a legal conclusion,
20 which, as affirmed by the Ninth Circuit are legal
21 conclusions, and, as such, these are pure conclusions of
22 law, which means: **this Court’s conclusion that § 3(g) of**
23 **the JVA and AJVA are agreements to agree and do not**
24 **bind Cinco to a “perpetual license” are law of the case**
25 **and cannot be disturbed or challenged at trial.** This
26 theory based on interpretation of a contract has been
27 considered and rejected by this Court and the Ninth Circuit
28

1 in this case, and because it is a “pure issue[] of law,
2 however, [it is] binding” on Defendants under law of the
3 case. *Ranchers Cattlemen Action Legal Fund United*
4 *Stockgrowers of Am. v. U.S. Dep't of Agr.*, 499 F.3d 1108,
5 1114 (9th Cir. 2007); *see, e.g. Arizona v. California*, 460
6 U.S. 605, 618 (1983) ((citing the rule as being “when a
7 court decides upon a rule of law, that decision should
8 continue to govern the same issues in subsequent stages in
9 the same case”). Defendants now trot out other theories
10 such the fact that the JVA and prior Operating Agreement
11 are still somewhat live under a theory of partial integration,
12 however, the following point prevails over each of these
13 contortions: Defendants can point to no agreement or
14 document, or acct, or statement, binding Cinco to a
15 perpetual, irrevocable, royalty free licensee of its Marks.
16 As such, in the absence of any written agreement, or
17 documentation of any license terms, the sole license that
18 existed as of May 31, 2024, was implied and terminable at
19 will *See Pogrebnoy v. Russian Newspaper Distribution,*
20 *Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff'd*,
21 742 F. App'x 291 (9th Cir. 2018) (“[A]n implied license,
22 like any other contract, is terminable at the will of either
23 party if it is not for a specified term.”). One final flaw exists
24 in the attempt to bind Cinco to the AJVA, and that is one
25 of issue preclusion in favor of Plaintiffs. As evidenced by
26 Plaintiff's own Third Amended Complaint (verified) in the
27 Prior Governance Action, the entire pleading is based on
28

1 the theory that -- and it sought judgment concluding that -
2 - Cinco is an alter ego of the entity that was a 60% member
3 of PCJV. (See Trial Exhibit No. 1421 p. 7:3-14.) Such
4 allegations, having been dismissed, with prejudice, by
5 Koren, re4nder thee accusations extinguished, and, as such,
6 Defendants are precluded from alleging them ever again.

7 Regarding likelihood of confusion, which may be
8 resumed, and the jury may be so instructed “[w]here,’ as
9 here, “a licensee persists in the unauthorized use of a
10 licensor’s trademark, courts have found that the continued
11 use alone establishes a likelihood of consumer
12 confusion.” *Robert Trent Jones II, Inc. v. GFSI, Inc.*, 537
13 F. Supp. 2d 1061, 1065 (N.D. Cal. 2008) (citing and
14 quoting *Sun Microsystems v. Microsoft Corp.*, 999
15 F.Supp. 1301, 1311 (N.D.Cal.1998) (citing *Paisa, Inc. v.*
16 *N & G Auto, Inc.*, 928 F.Supp. 1009, 1012 n. 4
17 (C.D.Cal.1996); *Hollywood Athletic Club*, 938 F.Supp. at
18 614–15 (C.D.Cal.1996)). The Sixth Circuit’s analysis in
19 Max Rack, Inc. v. Core Health & Fitness, LLC, 40 F.4th
20 454, 464 (6th Cir. 2022) is instructive:

21
22 “A separate body of law has developed for this
23 distinct claim that a holdover licensee has
24 continued to use a licensor’s mark after their
25 agreement expired. See 4 McCarthy, *supra*, §
26 25:31 (citing cases). In this context, courts have
27 jettisoned the usual totality-of-the-
28 circumstances test in favor of a more
categorical rule: “proof of continued,
unauthorized use of an original trademark by
one whose license to use the trademark had

1 been terminated is sufficient to establish
2 ‘likelihood of confusion.’ ” *U.S. Structures, Inc.*
3 *v. J.P. Structures, Inc.*, 130 F.3d 1185, 1190
4 (6th Cir. 1997); *ITT Indus., Inc. v. Wastecorp.*
5 *Inc.*, 87 F. App’x 287, 293 (3d Cir. 2004);
6 *Gorenstein Enters., Inc. v. Quality Care-USA,*
7 *Inc.*, 874 F.2d 431, 435 (7th Cir. 1989); *Burger*
8 *King Corp. v. Mason*, 710 F.2d 1480, 1492–93
9 (11th Cir. 1983); *Pro. Golfers Ass’n of Am. v.*
10 *Bankers Life & Cas. Co.*, 514 F.2d 665, 670 (5th
11 Cir. 1975); *L & L Wings, Inc. v. Marco-Destin,*
12 *Inc.*, 676 F. Supp. 2d 179, 188 (S.D.N.Y. 2009).
13 This rule makes good sense when a holdover
14 licensee blatantly infringes the licensor’s mark
15 by using that mark in the same way as it did
16 before the agreement expired. Without any need
17 to tick through factors, it should be obvious that
18 consumers will believe, for example, that a
19 pizza restaurant remains affiliated with the
20 “Little Caesars” chain when a terminated
21 franchisee continues to operate the pizzeria as a
22 Little Caesars. *See Little Caesar Enters., Inc. v.*
23 *Miramar Quick Serv. Rest. Corp.*, 2020 WL
24 4516289, at *3 (6th Cir. 2020) (order)”

18 Although Plaintiff intends to, and will, adduce proof of the
19 *Sleekcraft* factors, the presumption exists, and it is entitled to
20 stand on this presumption alone. *See also, Brookfield Commc’ns,*
21 *Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1056 (9th Cir. 1999)
22 (“In light of the virtual identity of marks, if they were used with
23 identical products or services likelihood of confusion would
24 follow as a matter of course”); *Park ‘n Fly, Inc. v. Dollar Park*
25 *& Fly, Inc.*, 782 F.2d 1508, 1509 (9th Cir. 1986) (holding that
26 when marks and services are identical and channels are the
27 same, likelihood of confusion is assumed, even if the other
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1 factors weight against); *see also Blue Mako Inc. v. Minidis*, No.
2 CV 07-916 AHM (SHX), 2008 WL 11334205 (C.D. Cal. June
3 23, 2008) (applying these principles to similar facts). Although
4 Plaintiff intends to, and will, adduce proof of the *Sleekcraft*
5 factors, the presumption exists, and it is entitled to stand on this
6 presumption alone.

7 4. Defendants' Position Statement: If Defendants are not
8 found to have a superior claim to ownership, authorization
9 issues framed by the Proposed Final Pretrial Conference
10 Order (Dkt. No. 244), the Memoranda of Contentions of
11 Law and Fact (Dkt. Nos. 197 and 199) and pleadings are
12 whether, based on a partnership meeting of the minds,
13 governing documents, course of performance, fiduciary
14 and contractual obligations, the implied covenant of good
15 faith and fair dealing, and reasonable and detrimental
16 reliance: (1) PCJV USA, LLC had a "lifetime" license as a
17 joint venture partner; (2) PCJV USA, LLC had a 20-year
18 license with three 10-year options; (3) PCJV USA, LLC
19 had a non-terminable-at-will license; (4) Plaintiff owed
20 fiduciary or contractual obligations to provide PCJV USA,
21 LLC a long-term license consistent with the PCJV USA
22 Parties being joint venture partners, *see J. Thomas*
23 *McCarthy, McCarthy on Trademarks and Unfair*
24 *Competition*, § 18:15, at (5th ed.) ("It is elementary
25 ancient law that an assignee never stands in any better
26 position than his assignor") (citation omitted); and (5)
27 other defenses to enforcement, including promissory
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1 estoppel, authorizing PCJV USA, LLC's continued use of
2 the U.S. trademarks. Plaintiff's proffered statement is non-
3 responsive. It is a combative, inappropriate and false
4 narrative of record evidence, preliminary rulings and the
5 authorization issues for trial as set forth in the Proposed
6 Final Pretrial Conference Order (Dkt. No. 244),
7 Memoranda of Contentions of Law and Fact (Dkt. Nos.
8 197 and 199) and pleadings. "The court's preliminary
9 injunction did not make final factual determinations; no
10 party moved for summary judgment; and the jury needs to
11 be instructed on the claims asserted in this case." Dkt. No.
12 254 at 2. Plaintiff's asserted "legal positions," which seek
13 to avoid a trial on the merits, are also based on inapplicable
14 authority (or no authority at all) and misstate the record.
15 For these reasons, including because Plaintiff's "legal
16 positions" go beyond identifying the actual authorization
17 issues set for trial, Defendants will address them if or when
18 they arise after the evidence on PCJV USA LLC's
19 authorization to continue using the U.S. trademarks is
20 presented at trial.

21 5. Plaintiff's Supporting Evidence: Trial Exhibit 29 (May 31,
22 2024 Termination); photographs of various stores taken
23 from May 31, 2025 through the present; Testimony of
24 Koren; Plaintiff executives Gregorio (Plaintiff's CEO),
25 Concepcion (Plaintiff's COO charged with US operations),
26 Tan (Director responsible for international franchising);
27 investigator; Franchisees; Kim Lambert and Barry Kurtz;
28

1 in addition to the following documents Amended Joint
2 Venture Agreement and Joint Venture Agreement.

3 6. Defendants' Supporting Evidence: documents and
4 testimony including and related to (1) Defendants' senior
5 use and quality control of Potato Corner in the United
6 States; (2) the superseding and restructure agreement
7 confirmed by Guy Koren and Jose Magsaysay vesting
8 partnership rights to build, develop and control Potato
9 Corner in the United States; (3) the joint venture agreement
10 vesting lifetime partnership rights to build, develop and
11 control Potato Corner in the United States; (4) absent a
12 license agreement, which SPAVI Parties disavow, PCJV
13 USA, LLC's owns the U.S. Potato Corner marks as its use
14 inured to its own benefit; (5) all the terms and conditions
15 of the JVA and First Amendment thereto controlling
16 licensing, approval of franchisee agreements, including as
17 disclosed in franchise disclosure documents ("FDDs"), and
18 management and operations of Potato Corner in the United
19 States; (6) parol evidence regarding the partners' meeting
20 of the minds; (7) the JVA's related agreements, which
21 remained operative and under which Cinco Corporation
22 remained a fiduciary and party to the JVA after the First
23 Amendment as confirmed a plethora of documentary
24 evidence; (8) the license agreements setting forth the terms
25 and conditions upon which PCJV USA, LLC's senior use
26 and control of Potato Corner in the United States would
27 inure to the benefit of Cinco Corporation, which the SPAVI
28

1 Parties now disavow, even though Cinco Corporation
2 offered it through DLA Piper, or thereafter accepted,
3 countersigned or otherwise entered into the license
4 agreements as evidenced in many writings and agreed and
5 approved of in FDDs; (9) course of performance for more
6 than a decade as evidenced by approved FDDs, which
7 ratified the license agreements and confirmed an entered
8 into license agreement; (10) reasonable and detrimental
9 reliance; (11) fiduciary obligations, the implied covenant
10 of good faith and fair dealing, and the JVA and First
11 Amendment's plain acknowledgement that there are no
12 terminable-at-will branding rights; (12) Plaintiff's denial of
13 stepping into Cinco Corporation's shoes and acquiring the
14 licensing burdens attached to the U.S. trademarks; and (13)
15 Plaintiff's suppression of authorization evidence

16 e. Element No. 5: Damage caused by infringement designation.

- 17 1. This element is disputed.
- 18 2. Nature of Dispute: Legal and Factual
- 19 3. Plaintiff's Position Statement: The standard to be followed
20 is set forth in 15 USC § 1117 which only requires this
21 Court's approval in equity to proceed with money
22 damages. The Courts have, contrary to Defendant's
23 apparent position, removed the requirement of willfulness
24 to obtain disgorgement., *Romag Fasteners, Inc. v. Fossil,*
25 *Inc.*, — U.S. —, 140 S. Ct. 1492, 1495-97, 206 L.Ed.2d
26 672 (2020) (holding willfulness is not a precondition to
27 disgorgement of profits under the Lanham Act). (Dkt. No.
28

1 594.) Defendants ignore the difference between normal
2 infringement and this case, the holdover licensee, where
3 the standard for likelihood of confusion is lowered, and
4 even sometimes presumed, and irreparable harm is also
5 presumed. The Lanham Act allows Defendants to raise the
6 other arguments to rebut the presumption of irreparable
7 harm, but the standard as applied here allows for
8 disgorgement

9 4. Defendants' Position Statement: Likelihood of confusion,
10 when coupled with likely irreparable harm, is the standard
11 for injunctive relief, the primary remedy under the Lanham
12 Act (*National Grange of the Order of Patrons of*
13 *Husbandry v. Cal. State Grange*, 182 F.Supp. 3d 1065,
14 1071 (E.D. Cal. 2016)), the benefits of which Plaintiff has
15 already obtained in this case by flipping franchisees under
16 contract with Defendants to join its organization—
17 notwithstanding PCJV USA, LLC's rebranding rights and
18 obligations disclosed in FDDs; Plaintiff fails to
19 acknowledge its legal and higher burden of proof to
20 establish an entitlement to monetary recovery, whether
21 legal damages (which Plaintiff is not pursuing as there is
22 no evidence it has a legal right to conduct a franchise
23 business in California or elsewhere in the United States) or
24 disgorgement—both of which stem from actual confusion
25 in the market not attributable to Plaintiff's own conduct as
26 proof of a defendant actually trading on the goodwill of
27 another resulting in either lost profits or unjust enrichment
28

(*Gracie v. Gracie*, 217 F.3d 1060, 1068 (9th Cir. 2000)); in addition to there being no consumer survey evidence or probative evidence of actual confusion not attributable to Plaintiff's own conduct (let alone attributable to trademark infringement), Defendants' exercise of bona fide good faith belief not to waive (a) pre-existing partnership (whether ownership or authorization) rights and obligations to use and control the U.S. trademarks and to equally receive service fees if any royalties were paid to the registrant when (b) Plaintiff allegedly acquired U.S. Potato Corner trademarks in the middle of franchise litigation between joint venture partners, (c) over Defendants' objection, (d) initiating this lawsuit in a conspiracy 3 days after the settlement with Plaintiff's assignor to circumvent a state court injunction rather than go to trial in state court, (e) disregarding a tolling agreement to continue discussions and not filing an action for declaratory relief if there was an impasse to determine who has superior trademark rights, (f) creating the risk of marketplace confusion by virtue of its own conduct; and (g) suppressing evidence, including properly served discovery ordered to be produced, does not satisfy Plaintiff's legal burden of proof. *See Yuga Labs, Inc. v. Ripps*, Case No. CV 22-4355-JFW(JEMx), 2023 WL 7089922, at *10 (C.D. Cal. Oct. 25, 2023) (while totality of the circumstances are used to determine an award of profits, "defendant's mental state is 'a highly important consideration'").

1 5. Plaintiff's Supporting Evidence: Defendants have
2 produced financials for the period in question May 31,
3 2024 through the present, and, given that the entirety of
4 their business is built of the confusion, we only need to
5 prove profits which can be disgorged. Thus, the financials
6 as well as Koren testimony and testimony of franchisees as
7 well as correspondence regarding costs of goods sold as
8 well as the testimony of the CFO of Shakey's will establish
9 damage. No expert is needed for arithmetic. To the
10 contrary, it is Defendant who bears a heavier burden of
11 establishing what costs or expenses "actually contributed
12 to the sale of the infringing products." *Monster Energy Co.*
13 *v. Integrated Supply Network, LLC*, 533 F. Supp. 3d 928,
14 938 (C.D. Cal. 2021)

15 6. Defendant's Supporting Evidence: documents and
16 testimony including and related to (1) the parties' meeting
17 of the minds and partnership agreement to co-own Potato
18 Corner in the United States, where Defendants promised to
19 contribute services and Plaintiff promised to vest IP rights
20 in the partnership as supported by written agreements and
21 verified pleadings; (2) the JVA and related agreements
22 vesting licensing and quality control in PCJV USA, LLC's
23 President, approval of franchise agreements, including as
24 disclosed in FDDs, in PCJV USA, LLC's Management,
25 and authority to manage Potato Corner in the United States
26 in PCJV USA, LLC's executive officers (not Cinco
27 Corporation); (3) absent a license agreement, PCJV USA,
28

1 LLC's use of the U.S. Potato Corner marks inured to PCJV
2 USA, LLC's benefit; (4) Defendants' continuing
3 authorization to use the U.S. Potato Corner trademarks
4 under a lifetime, 50-year, or non-terminable-at-will
5 license, including for the reasons stated herein; (5)
6 Defendants' objection to Plaintiff's announced plans to
7 acquire Cinco Corporation's assets and liabilities, but
8 representations to Defendants that they would be bound by
9 a settlement with Cinco resolving licensing issues; (6) the
10 parties' tolling agreement, including to continue
11 discussions after Defendants separately settled with Cinco
12 Corporation; (7) Plaintiff and Cinco Corporation's bad
13 faith conspiracy to initiate this lawsuit 3 days after the
14 settlement with Plaintiff's assignor to circumvent a state
15 court injunction rather than go to trial in state court or settle
16 with Defendants; (8) Plaintiff's own misconduct creating
17 the risk of marketplace confusion; (9) no consumer survey
18 evidence or evidence of marketplace confusion attributable
19 to trademark infringement or unfair competition that is the
20 subject of this case; (10) Plaintiff's suppression of
21 evidence, including properly served discovery ordered to
22 be produced; (11) no evidence of unjust enrichment,
23 including no net profits or net profits attributable to the
24 alleged infringement at issue, to disgorge; and (12) no
25 evidence regarding individual Defendants' responsibility

26 **2) Claim 3: False Designation of Origin and Description of Fact**
27 **Against All Entity Defendants (15 U.S.C. § 1125):**
28

1 a. Element No. 1: The Defendants used a designation, such as a
2 word, term, name, device, or a combination thereof, or a false
3 designation of origin:

4 1. This element is disputed.

5 2. Nature of Dispute: Legal and Factual

6 3. Plaintiff's Position Statement: This is essentially the
7 federal version of our § 17200 claim in that, when looked
8 at in its entirety, fits squarely within what was intended by
9 15 USDCD 1125(a)(1)(A). By continuing to operate using
10 the same federal trademarks, menu layouts, and color
11 schemes, and promotes its new brand as having the 'same
12 taste' after having reverse engineered the flavorings and
13 then used that, plus the menu that is unchanged – same
14 colors, fonts, pictures, layout, even same product names –
15 and all of this is likely to cause consumer confusion
16 regarding the source or origin of the goods or services, as
17 customers may believe the new business is still affiliated
18 with or originates from the original brand. *See generally*
19 *Blue Mako Inc. v. Minidis*, No. CV 07-916 AHM (SHX),
20 2008 WL 11334205 (C.D. Cal. June 23, 2008) (applying
21 these principles to similar facts).

22 4. Defendants' Position Statement: The legal issues set for
23 trial in the Proposed Final Pretrial Conference Order (Dkt.
24 No. 244), Memoranda of Contentions of Law and Fact
25 (Dkt. Nos. 197 and 199) and pleadings regard ownership
26 of and authorization to use the U.S. Potato Corner
27 trademarks; there is no “trade dress” issue in the pleadings
28

1 set for trial. Moreover, “same as” comparative advertising
2 of taste or fragrance is not unfair competition. *Smith v.*
3 *Chanel, Inc.*, 402 F.2d 562, 563 (9th Cir. 1968). Further,
4 proffered “former location” confusion is not actionable in
5 California (*see* Bus. & Prof. Code § 16600) nor proves or
6 is probative of ordinary consumer confusion that is the
7 subject of the Lanham Act after the market settles from a
8 partnership divorce, especially after Plaintiff is the one
9 who changed the *status quo* and caused any confusion

10 5. Plaintiff’s Supporting Evidence: Photographs and
11 testimony from former franchisees, the COO of SPAVI,
12 Mr. Concepcion, as well as the testimony of Koren, and the
13 Franchise Agreements, FDDs, and leases, of PCJV over the
14 years.

15 6. Defendants’ Supporting Evidence: documents and
16 testimony including and related to (1) Defendants’
17 ownership of the U.S. Potato Corner trademarks, which
18 merely are a symbol of PCJV USA, LLC’s business and
19 restaurant and catering services; (2) Defendants’
20 authorization to use the U.S. Potato Corner trademarks; (3)
21 no consumer survey evidence; (4) no evidence of
22 actionable ordinary consumer confusion but just
23 speculation about market conditions after the market
24 stabilizes, let alone actionable confusion attributable to
25 alleged unfair competition framed by the Proposed Final
26 Pretrial Conference Order (Dkt. No. 244), Memoranda of
27 Contentions of Law and Fact (Dkt. Nos. 197 and 199) and
28

1 pleadings; (5) no marketplace confusion before Plaintiff
2 brought this action; (6) any marketplace confusion would
3 stem from Plaintiff's efforts to create it rather than Plaintiff
4 just filing an action for declaratory relief to resolve
5 ownership and authorization issues after it acquired
6 contested assets in the middle of franchise litigation
7 between joint venture partners; and (7) Plaintiff's
8 suppression of evidence, including Plaintiff's
9 communications with U.S. franchisees under contract with
10 PCJV USA, LLC that were timely requested and ordered
11 be produced.

12 b. Element No. 2: The use was in interstate commerce.

13 i. This element is not disputed

14 c. Element No. 3: The use was in connection with goods or services.

15 1. This element is disputed.

16 2. Nature of Dispute: Legal and Factual

17 3. Plaintiff's Position Statement: Defendants' purported
18 objection is one of fact no law. The registrations are for
19 services, and the use of the marks was for services. If
20 Defendants were using the Marks for some other purpose,
21 they have more liability than previously known.

22 4. Defendants' Position Statement: The registered first use of
23 the registered marks are for restaurant and catering
24 services; the registered marks are merely a symbol of
25 Potato Corner in the United States, which distributed goods
26 and services; the case is not a "goods" case, including
27
28

1 because the registrations predate any alleged unfair
2 competition.

3 5. Plaintiff's Supporting Evidence: USPTO filings including
4 Registrations and Assignments.

5 6. Defendants' Supporting Evidence: documents and
6 testimony including and related to (1) U.S. Reg. No.
7 5900257: the word mark "Potato Corner"; (2) U.S. Reg.
8 No. 6088456: "World's Best Flavored French Fries; and
9 (3) U.S. Reg. No. 3760041: the Logo Mark.

10 d. Element No. 4: Defendants' designation or false designation is
11 likely to cause confusion, mistake, or deception regarding either
12 the affiliation, connection, or association of the defendant with
13 another person, or the origin, sponsorship, or approval of the
14 defendant's goods, services, or commercial activities by another
15 person.

16 1. This element is disputed in part.

17 2. Nature of Dispute: Legal and Factual

18 3. Plaintiff's Legal Position: The ultimate test" for unfair
19 competition is exactly the same as for trademark
20 infringement: "whether the public is likely to be deceived
21 or confused." *Century 21 Real Est. Corp. v. Sandlin*, 846
22 F.2d 1175, 1178 (9th Cir. 1988) Regarding likelihood of
23 confusion, which may be presumed, and the jury may be
24 so instructed "[w]here, as here, "a licensee persists in the
25 unauthorized use of a licensor's trademark, courts have
26 found that the continued use alone establishes a likelihood
27 of consumer confusion." *Robert Trent Jones II, Inc. v.*
28

1 *GFSI, Inc.*, 537 F. Supp. 2d 1061, 1065 (N.D. Cal. 2008)
2 (citing and quoting *Sun Microsystems v. Microsoft Corp.*,
3 999 F.Supp. 1301, 1311 (N.D.Cal.1998) (citing *Paisa, Inc.*
4 *v. N & G Auto, Inc.*, 928 F.Supp. 1009, 1012 n. 4
5 (C.D.Cal.1996); *Hollywood Athletic Club*, 938 F.Supp. at
6 614–15 (C.D.Cal.1996)). The Sixth Circuit’s analysis in
7 *Max Rack, Inc. v. Core Health & Fitness, LLC*, 40 F.4th
8 454, 464 (6th Cir. 2022) is instructive:

9 “A separate body of law has developed for this
10 distinct claim that a holdover licensee has
11 continued to use a licensor's mark after their
12 agreement expired. *See* 4 McCarthy, *supra*, §
13 25:31 (citing cases). In this context, courts have
14 jettisoned the usual totality-of-the-
15 circumstances test in favor of a more categorical
16 rule: “proof of continued, unauthorized use of an
17 original trademark by one whose license to use
18 the trademark had been terminated is sufficient
19 to establish ‘likelihood of confusion.’ ” *U.S.*
20 *Structures, Inc. v. J.P. Structures, Inc.*, 130 F.3d
21 1185, 1190 (6th Cir. 1997); *ITT Indus., Inc. v.*
22 *Wastecorp. Inc.*, 87 F. App'x 287, 293 (3d Cir.
23 2004); *Gorenstein Enters., Inc. v. Quality Care-*
24 *USA, Inc.*, 874 F.2d 431, 435 (7th Cir. 1989);
25 *Burger King Corp. v. Mason*, 710 F.2d 1480,
26 1492–93 (11th Cir. 1983); *Pro. Golfers Ass'n of*
27 *Am. v. Bankers Life & Cas. Co.*, 514 F.2d 665,
28 670 (5th Cir. 1975); *L & L Wings, Inc. v. Marco-*
Destin, Inc., 676 F. Supp. 2d 179, 188 (S.D.N.Y.
2009). This rule makes good sense when a
holdover licensee blatantly infringes the
licensor's mark by using that mark in the same
way as it did before the agreement expired.
Without any need to tick through factors, it
should be obvious that consumers will believe,
for example, that a pizza restaurant remains
affiliated with the “Little Caesars” chain when a

1 terminated franchisee continues to operate the
2 pizzeria as a Little Caesars. *See Little Caesar*
3 *Enters., Inc. v. Miramar Quick Serv. Rest. Corp.*,
4 2020 WL 4516289, at *3 (6th Cir. 2020) (order)”

5 Although Plaintiff intends to, and will, adduce proof of the
6 *Sleekcraft* factors, the presumption exists, and it is entitled to
7 stand on this presumption alone. *See also, Brookfield Commc'ns,*
8 *Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1056 (9th Cir. 1999)
9 (“In light of the virtual identity of marks, if they were used with
10 identical products or services likelihood of confusion would
11 follow as a matter of course”); *Park 'n Fly, Inc. v. Dollar Park &*
12 *Fly, Inc.*, 782 F.2d 1508, 1509 (9th Cir. 1986) (holding that when
13 marks and services are identical and channels are the same,
14 likelihood of confusion is assumed, even if the other factors
15 weight against); *see also Blue Mako Inc. v. Minidis*, No. CV 07-
16 916 AHM (SHX), 2008 WL 11334205 (C.D. Cal. June 23, 2008)
17 (applying these principles to similar facts).

18 4. Defendants’ Position Statement: Defendants are not going
19 to argue no likelihood of confusion arising from continuous
20 use of registered and unregistered trademarks if
21 Defendants do not prevail on ownership or authorization.
22 However, this is not a “trade dress” case. The legal issues
23 set for trial in the Proposed Final Pretrial Conference Order
24 (Dkt. No. 244), Memoranda of Contentions of Law and
25 Fact (Dkt. Nos. 197 and 199) and pleadings regard
26 ownership of and authorization to use the U.S. Potato
27 Corner trademarks; there is no “trade dress” issue in the
28 pleadings set for trial. Moreover, “same as” comparative

1 advertising of taste or fragrance is not unfair competition.
2 *Smith v. Chanel, Inc.*, 402 F.2d 562, 563 (9th Cir.
3 1968). Further, proffered “former location” confusion is
4 not actionable in California (*see* Bus. & Prof. Code §
5 16600) nor proves or is probative of ordinary consumer
6 confusion that is the subject of the Lanham Act after the
7 market settles from a partnership divorce, especially after
8 Plaintiff is the one who changed the *status quo* and caused
9 any confusion.

10 5. Plaintiff’s Supporting Evidence: Trial Exhibit 29 (May 31,
11 2024 Termination); photographs of various stores taken
12 from May 31, 2025 through the present; Testimony of
13 Koren; Plaintiff executives Gregorio (Plaintiff’s CEO),
14 Concepcion (Plaintiff’s COO charged with US operations),
15 Tan (Director responsible for international franchising);
16 investigator; Franchisees; Kim Lambert and Barry Kurtz;
17 in addition to the following documents Amended Joint
18 Venture Agreement and Joint Venture Agreement; the
19 COO of SPAVI, Mr. Concepcion, the Franchise
20 Agreements, FDDs, and leases, of PCJV over the years.

21 6. Defendants’ Supporting Evidence: documents and
22 testimony including and related to (1) Defendants’
23 ownership of the U.S. Potato Corner trademarks, which
24 merely are a symbol of PCJV USA, LLC’s business and
25 restaurant and catering services; (2) Defendants’
26 authorization to use the U.S. Potato Corner trademarks; (3)
27 no consumer survey evidence; (4) no evidence of
28

1 actionable ordinary consumer confusion but just
2 speculation about market conditions after the market
3 stabilizes, let alone actionable confusion attributable to
4 alleged unfair competition framed by the Proposed Final
5 Pretrial Conference Order (Dkt. No. 244), Memoranda of
6 Contentions of Law and Fact (Dkt. Nos. 197 and 199) and
7 pleadings; (5) no marketplace confusion before Plaintiff
8 brought this action; (6) any marketplace confusion would
9 stem from Plaintiff's efforts to create it rather than Plaintiff
10 just filing an action for declaratory relief to resolve
11 ownership and authorization issues after it acquired
12 contested assets in the middle of franchise litigation
13 between joint venture partners; and (7) Plaintiff's
14 suppression of evidence, including Plaintiff's
15 communications with U.S. franchisees under contract with
16 PCJV USA, LLC that were timely requested and ordered
17 be produced

18 e. Element No. 5: Damage caused by false designation.

19 1. This element is disputed.

20 2. Nature of Dispute: Legal and factual

21 3. Plaintiff's Legal Position: The standard to be followed is
22 set forth in 15 USC § 1117 which only requires this Court's
23 approval in equity to proceed with money damages. The
24 Courts have, contrary to Defendant's apparent position,
25 removed the requirement of willfulness to obtain
26 disgorgement., *Romag Fasteners, Inc. v. Fossil, Inc.*, —
27 U.S. —, 140 S. Ct. 1492, 1495-97, 206 L.Ed.2d 672
28

1 (2020) (holding willfulness is not a precondition to
2 disgorgement of profits under the Lanham Act). (Dkt. No.
3 594.) Defendants ignore the difference between normal
4 infringement and this case, the holdover licensee, where
5 the standard for likelihood of confusion is lowered, and
6 even sometimes presumed, and irreparable harm is also
7 presumed. The Lanham Act allows Defendants to raise the
8 other arguments to rebut the presumption of irreparable
9 harm, but the standard as applied here allows for
10 disgorgement.

11 4. Defendants' Position Statement: Likelihood of confusion,
12 when coupled with likely irreparable harm, is the standard
13 for injunctive relief, the primary remedy under the Lanham
14 Act (*National Grange of the Order of Patrons of*
15 *Husbandry v. Cal. State Grange*, 182 F.Supp. 3d 1065,
16 1071 (E.D. Cal. 2016)), the benefits of which Plaintiff has
17 already obtained in this case by flipping franchisees under
18 contract with Defendants to join its organization—
19 notwithstanding PCJV USA, LLC's rebranding rights and
20 obligations disclosed in FDDs; Plaintiff fails to
21 acknowledge its legal and higher burden of proof to
22 establish an entitlement to monetary recovery, whether
23 legal damages (which Plaintiff is not pursuing as there is
24 no evidence it has a legal right to conduct a franchise
25 business in California or elsewhere in the United States) or
26 disgorgement—both of which stem from actual confusion
27 in the market not attributable to Plaintiff's own conduct as
28

1 proof of a defendant actually trading on the goodwill of
2 another resulting in either lost profits or unjust enrichment
3 (*Gracie v. Gracie*, 217 F.3d 1060, 1068 (9th Cir. 2000)); in
4 addition to there being no consumer survey evidence or
5 probative evidence of actual confusion not attributable to
6 Plaintiff's own conduct (let alone attributable to trademark
7 infringement), Defendants' exercise of bona fide good faith
8 belief not to waive (a) pre-existing partnership (whether
9 ownership or authorization) rights and obligations to use
10 and control the U.S. trademarks and to equally receive
11 service fees if any royalties were paid to the registrant
12 when (b) Plaintiff allegedly acquired U.S. Potato Corner
13 trademarks in the middle of franchise litigation between
14 joint venture partners, (c) over Defendants' objection, (d)
15 initiating this lawsuit in a conspiracy 3 days after the
16 settlement with Plaintiff's assignor to circumvent a state
17 court injunction rather than go to trial in state court, (e)
18 disregarding a tolling agreement to continue discussions
19 and not filing an action for declaratory relief if there was
20 an impasse to determine who has superior trademark rights,
21 (f) creating the risk of marketplace confusion by virtue of
22 its own conduct; and (e) suppressing evidence, including
23 properly served discovery ordered to be produced, does not
24 satisfy Plaintiff's legal burden of proof. *See Yuga Labs,*
25 *Inc. v. Ripps*, Case No. CV 22-4355-JFW(JEMx), 2023
26 WL 7089922, at *10 (C.D. Cal. Oct. 25, 2023) (while
27 totality of the circumstances are used to determine an
28

1 award of profits, “defendant’s mental state is ‘a highly
2 important consideration’”).

3 5. Plaintiff’s Supporting Evidence: Defendants have
4 produced financials for the period in question May 31,
5 2024 through the present, and, given that the entirety off
6 their business is built off the confusion, we only need to
7 prove profits which can be disgorged. Thus, the financials
8 as well as Koren testimony and testimony of franchisees as
9 well; as correspondence regarding costs of goods sold as
10 well as the testimony of the CFO of Shakley’s will
11 establish damage. No expert is needed for arithmetic. To
12 the contrary, it is Defendant who bears a heavier burden of
13 establishing what costs or expenses “actually contributed
14 to the sale of the infringing products.” *Monster Energy Co.*
15 *v. Integrated Supply Network, LLC*, 533 F. Supp. 3d 928,
16 938 (C.D. Cal. 2021)

17 6. Defendant’s Supporting Evidence: documents and
18 testimony including and related to (1) the parties’ meeting
19 of the minds and partnership agreement to co-own Potato
20 Corner in the United States, where Defendants promised to
21 contribute services and Plaintiff promised to vest IP rights
22 in the partnership as supported by written agreements and
23 verified pleadings; (2) the JVA and related agreements
24 vesting licensing and quality control in PCJV USA, LLC’s
25 President, approval of franchise agreements, including as
26 disclosed in FDDs, in PCJV USA, LLC’s Management,
27 and authority to manage Potato Corner in the United States
28

1 in PCJV USA, LLC's executive officers (not Cinco
2 Corporation); (3) absent a license agreement, PCJV USA,
3 LLC's use of the U.S. Potato Corner marks inured to PCJV
4 USA, LLC's benefit; (4) Defendants' continuing
5 authorization to use the U.S. Potato Corner trademarks
6 under a lifetime, 50-year, or non-terminable-at-will
7 license, including for the reasons stated herein; (5)
8 Defendants' objection to Plaintiff's announced plans to
9 acquire Cinco Corporation's assets and liabilities, but
10 representations to Defendants that they would be bound by
11 a settlement with Cinco resolving licensing issues; (6) the
12 parties' tolling agreement, including to continue
13 discussions after Defendants separately settled with Cinco
14 Corporation; (7) Plaintiff and Cinco Corporation's bad
15 faith conspiracy to initiate this lawsuit 3 days after the
16 settlement with Plaintiff's assignor to circumvent a state
17 court injunction rather than go to trial in state court or settle
18 with Defendants; (8) Plaintiff's own misconduct creating
19 the risk of marketplace confusion; (9) no consumer survey
20 evidence or evidence of marketplace confusion attributable
21 to trademark infringement or unfair competition that is the
22 subject of this case; (10) Plaintiff's suppression of
23 evidence, including properly served discovery ordered to
24 be produced; (11) no evidence of unjust enrichment,
25 including no net profits or net profits attributable to the
26 alleged infringement at issue, to disgorge; and (12) no
27 evidence regarding individual Defendants' responsibility
28

1 **3) Claim 4: Contributory Trademark Infringement Against All**
2 **Defendants (Against Guy Koren, PCJV USA, LL, PCI Trading,**
3 **LLC, Potato Corner LA Group, LLC; GK Capital, LLC or NKM**
4 **Capital Group, LLC)**

5 a. Element No. 1: inducement of any Defendant to infringe one of
6 the Marks (affirmative steps or actions taken to encourage
7 infringement, exercising control over means oof infringement,
8 offering tools to assist in infringement, instructing how to
9 infringe).

10 1. This element is disputed.

11 2. Nature of Dispute: Legal and Factual

12 3. Plaintiff's Position Statement: it is assumed that the
13 primary dispute by Defendants here will be as to the
14 underlying question of infringement (ownership, license,
15 etc.). But if it is true that Plaintiff owned the Marks, and
16 had exclusive right to control them and Defendants lost
17 their right on May 31, 2024, the question is fairly on the
18 table whether (1) PCJV, the former licensees of the brand,
19 engaged in post termination contribution or inducement to
20 its sublicensees whose rights had also been terminated by
21 giving them aid and comfort (and collecting money from
22 them) after termination,, or (2) the supply chain affiliate
23 PCI Trading's sales of infringing cups etc. was constituted
24 contribution or inducement, or (3) whether Koren, the
25 owner or operator oof them all was also responsible for
26 contribution or inducement. 115 USC 1114; *Fonovisa, Inc.*
27 *v. Cherry Auction, Inc.*, 76 F.3d 259, 264–65 (9th Cir.

1 1996) (applied to host of swap meets when host know
2 infringement was occurring); *citing Inwood Lab'ys, Inc. v.*
3 *Ives Lab'ys, Inc.*, 456 U.S. 844, 854 (1982); *see Inwood*
4 *Lab'ys, Inc.*, 456 U.S. at 844, 854 (1982) (explaining that
5 when a party “suppl[ies]] its product to one whom it knows
6 or has reason to know is engaging in trademark
7 infringement, the manufacturer or distributor is
8 contributorily responsible for any harm done as a result of
9 the deceit”).

10 4. Defendants’ Position Statement: To establish liability for
11 contributory infringement, Plaintiff bears the burden of
12 proving the defendant had intent to cause direct
13 infringement or prior knowledge of direct infringement.
14 *See Perfect 10, Inc. v. Visa Intern. Service Ass’n*, 494 F.3d
15 788, 807 (9th Cir. 2007). That is not the same thing as
16 having knowledge of a bona fide dispute over trademark
17 ownership or authorization to use a trademark. Similarly,
18 officer or director liability includes a knowledge
19 requirement to establish liability. *SinCo Technologies Pte*
20 *Ltd. v. SinCo Electronics*, Case No. 17-cv-05517-EMC,
21 2018 WL 10638468, at *1 (N.D. Cal. Jan. 5, 2018).

22 5. Plaintiff’s Supporting Evidence: Testimony and statements
23 of Koren, franchisees, and SPAVI executives after
24 termination; correspondence with franchisees by SPAVI;
25 Franchise agreements and FDDs.

26 6. Defendants’ Supporting Evidence: documents and
27 testimony including and related to (1) the evidentiary
28

1 record establishing a bona fide trademark dispute over
2 ownership and authorization to use the U.S. Potato Corner
3 trademarks; (2) the alleged contributory infringing
4 Defendants did not have the intent to cause infringement or
5 knowledge that direct infringement was occurring; (3) the
6 alleged contributory infringing Defendants are not
7 similarly situated, including because some our downstream
8 users (who contributing nothing upstream) and one is
9 simply a supplier of publicly available materials; (4) Mr.
10 Koren, as an officer or member of Defendant entities, also
11 had no intent to confuse consumers, had no intent to trade
12 off the goodwill he did not own or have authorization to
13 use, and had good faith reasons to believe that trademark
14 infringement was not occurring.

15 b. Element No. 2: Material contribution

- 16 1. This element is disputed.
17 2. Nature of Dispute: Factual
18 3. Plaintiff's Supporting Evidence: testimony of Koren, his
19 staff, franchisees, and their communications
20 4. Defendants' Supporting Evidence: documents and
21 testimony including and related to whether the contribution
22 of each Defendant was material to the alleged infringement
23 and was provided with the requisite knowledge.

24 c. Element No. 3: Injury to Plaintiff.

- 25 1. This element is disputed
26 2. Nature of Dispute: Legal and Factual
27
28

1 3. Plaintiff's Position Statement: The standard to be followed
2 is set forth in 15 USC 1117 which only requires this Court's
3 approval in equity to proceed with money damages. The
4 Courts have contrary to Defendant's apparent position
5 removed the requirement of willfulness to obtain
6 disgorgement., Romag Fasteners, Inc. v. Fossil, Inc., —
7 U.S. —, 140 S. Ct. 1492, 1495-97, 206 L.Ed.2d 672
8 (2020) (holding willfulness is not a precondition to
9 disgorgement of profits under the Lanham Act). (Dkt. No.
10 594.) Defendants ignore the difference between normal
11 infringement and this case, the holdover licensee, where
12 the standard for likelihood of confusion is lowered, and
13 even sometimes presumed, and irreparable harm is also
14 presumed. The Lanham Act allows Defendants to raise the
15 other arguments to rebut the presumption of irreparable
16 harm, but the standard as applied here allows for
17 disgorgement.

18 4. PCJV USA Parties' Position Statement: Defendants
19 incorporate their positions legal positions above regarding
20 liability and damages for direct infringement and liability
21 for contributory infringement. In addition, damages for
22 contributory infringement should not be awarded upstream

23 5. Plaintiff's Supporting Evidence: Defendants have
24 produced financials for the period in question May 31,
25 2024 through the present, and, given that the entirety of
26 their business is built off the confusion, we only need to
27 prove profits which can be disgorged. Thus, the financials
28

as well as Koren testimony and testimony of franchisees as well; as correspondence regarding costs of goods sold as well as the testimony of the CFO of Shakley's will establish damage. No expert is needed for arithmetic. To the contrary, it is Defendant who bears a heavier burden of establishing what costs or expenses "actually contributed to the sale of the infringing products." *Monster Energy Co. v. Integrated Supply Network, LLC*, 533 F. Supp. 3d 928, 938 (C.D. Cal. 2021)

6. Defendants' Supporting Evidence: Defendants incorporate their above record.

4) **Claim 5: Contributory False Designation of Origin Against Guy Koren, PCJV USA, LL, PCI Trading, LLC, Potato Corner LA Group, LLC; GK Capital, LLC or NKM Capital Group, LLC**

a. Element No. 1: inducement of any Defendant to make use a false designation, such as a word, term, name, device, or a combination thereof, or a false designation of origin (affirmative steps or actions taken to encourage infringement, exercising control over means oof infringement, offering tools to assist in infringement, instructing how to infringe).

ii. This element is disputed.

iii. Nature of Dispute: Legal and Factual

iv. Plaintiff's Position Statement: it is assumed that the primary dispute by Defendants here will be as to the underlying question of infringement (ownership, license, etc.). But if it is true that Plaintiff owned the Marks, and had exclusive right to control them and Defendants lost their right

1 on May 31, 2024, the question is fairly on the table whether (1)
2 PCJV, the former licensees of the brand, engaged in post
3 termination contribution or inducement to its sublicensees
4 whose rights had also been terminated by giving them aid and
5 comfort (and collecting money from them) after termination,,
6 or (2) the supply chain affiliate PCI Trading’s sales of
7 infringing cups etc. was constituted contribution or
8 inducement, or (3) whether Koren, the owner or operator oof
9 them all was also responsible for contribution or inducement.
10 115 USC 1114; *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d
11 259, 264–65 (9th Cir. 1996) (applied to host of swap meets
12 when host know infringement was occurring); *citing Inwood*
13 *Lab’ys, Inc. v. Ives Lab’ys, Inc.*, 456 U.S. 844, 854 (1982); *see*
14 *Inwood Lab’ys, Inc.*, 456 U.S. at 844, 854 (1982) (explaining
15 that when a party “suppl[ies]] its product to one whom it
16 knows or has reason to know is engaging in trademark
17 infringement, the manufacturer or distributor is contributorily
18 responsible for any harm done as a result of the deceit”).

19 v. Defendants’ Position Statement: To establish liability for
20 contributory infringement, Plaintiff bears the burden of
21 proving the defendant had intent to cause direct infringement
22 or prior knowledge of direct infringement. *See Perfect 10, Inc.*
23 *v. Visa Intern. Service Ass’n*, 494 F.3d 788, 807 (9th Cir.
24 2007). That is not the same thing as having knowledge of a
25 *bona fide* dispute over trademark ownership or authorization to
26 use a trademark. Similarly, officer or director liability includes
27 a knowledge requirement to establish liability. *SinCo*
28

1 *Technologies Pte Ltd. v. SinCo Electronics*, Case No. 17-cv-
2 05517-EMC, 2018 WL 10638468, at *1 (N.D. Cal. Jan. 5,
3 2018).

4 vi. Plaintiff's Supporting Evidence: Testimony and
5 statements of Koren, franchisees, and SPAVI executives after
6 termination; correspondence with franchisees by SPAVI;
7 Franchise agreements and FDDs.

8 vii. Defendants' Supporting Evidence: documents and
9 testimony including and related to (1) the evidentiary record
10 establishing a bona fide trademark dispute over ownership and
11 authorization to use the U.S. Potato Corner trademarks; (2) the
12 alleged contributory infringing Defendants did not have the
13 intent to cause infringement or knowledge that direct
14 infringement was occurring; (3) the alleged contributory
15 infringing Defendants are not similarly situated, including
16 because some our downstream users (who contributing nothing
17 upstream) and one is simply a supplier of publicly available
18 materials; (4) Mr. Koren, as an officer or member of
19 Defendant entities, also had no intent to confuse consumers,
20 had no intent to trade off the goodwill he did not own or have
21 authorization to use, and had good faith reasons to believe that
22 trademark infringement was not occurring.

23 b. Element No. 2: Material contribution

24 i. This element is disputed.

25 ii. Nature of Dispute: Factual

26 iii. Plaintiff's Supporting Evidence: testimony of Koren, his
27 staff, franchisees, and their communications
28

1 iv. Defendants' Supporting Evidence: documents and
2 testimony including and related to whether the contribution of
3 each Defendant was material to the alleged infringement and
4 was provided with the requisite knowledge.

5 c. Element No. 3: Injury to Plaintiff.

6 i. This element is disputed.

7 ii. Nature of Dispute: Legal and factual

8 ii. Plaintiff's Position Statement: The standard to be followed is
9 set forth in 15 USC 1117 which only requires this Court's
10 approval in equity to proceed with money damages. The
11 Courts have contrary to Defendant's apparent position
12 removed the requirement of willfulness to obtain
13 disgorgement., *Romag Fasteners, Inc. v. Fossil, Inc.*, — U.S.
14 —, 140 S. Ct. 1492, 1495-97, 206 L.Ed.2d 672
15 (2020) (holding willfulness is not a precondition to
16 disgorgement of profits under the Lanham Act). (Dkt. No.
17 594.) Defendants ignore the difference between normal
18 infringement and this case, the holdover licensee, where the
19 standard for likelihood of confusion is lowered, and even
20 sometimes presumed, and irreparable harm is also presumed.
21 The Lanham Act allows Defendants to raise the other
22 arguments to rebut the presumption of irreparable harm, but
23 the standard as applied here allows for disgorgement,

24 iii. PCJV USA Parties' Position Statement: Defendants
25 incorporate their legal positions above regarding liability and
26 damages for direct infringement and liability for contributory
27 infringement. In addition, damages for contributory
28

infringement should not be awarded upstream.

iv. Plaintiff's Supporting Evidence: Defendants have produced financials for the period in question May 31, 2024 through the present, and, given that the entirety of their business is built off the confusion, we only need to prove profits which can be disgorged. Thus, the financials as well as Koren testimony and testimony of franchisees as well; as correspondence regarding costs of goods sold as well as the testimony of the CFO of Shakley's will establish damage. No expert is needed for arithmetic. To the contrary, it is Defendant who bears a heavier burden of establishing what costs or expenses "actually contributed to the sale of the infringing products." *Monster Energy Co. v. Integrated Supply Network, LLC*, 533 F. Supp. 3d 928, 938 (C.D. Cal. 2021)

iii. Defendants' Supporting Evidence: Defendants incorporate their above record.

2) Claim 6: Common Law Trademark Infringement Against All Defendants (Against Guy Koren, PCJV USA, LL, PCI Trading, LLC, Potato Corner LA Group, LLC; GK Capital, LLC or NKM Capital Group, LLC).

a. Element No. 1: the Word Mark, Slogan Mark, and/or the Logo Mark (all collectively, the "Marks") are valid and protectible trademarks:

i. This element is undisputed

b. Element No. 2: Plaintiff owns the Word Mark, Slogan Mark, and/or the Logo Mark

1 i. This element is disputed.

2 ii. Nature of Dispute: Factual and Legal.

3 iii. Plaintiff's Legal Position: Defendants do not dispute that
4 the registrations for all three Marks (Trial Exhibit Nos. 1, 3,
5 and 5) identify Cinco as the registrant and the first to use each
6 of the three Marks, nor do Defendants dispute that the Deeds
7 of Assignment attached to the notices filed with the USPTO
8 (Trial Exhibit Nos. 4 and 6) confirm that, unequivocally and
9 without exception, the entirety of these Marks were sold and
10 assigned to Plaintiff, along with all the goodwill arising out of
11 or associated with the Marks. Defendants also do not dispute
12 the testimony of Seller (Cinco) and Buyer (SPAVI) that the
13 Deeds are accurate in every way, that the sale and assignments
14 were comprehensive, without carve outs, and fully
15 consummated. Instead, Defendants take internally inconsistent
16 positions that are contradicted by various legal doctrine,
17 including the ones discussed *supra*: Licensee Estoppel, the
18 Lanham Act provisions rendering Defendants' positions
19 contrary to federal law, Law of the Case, that the Authorities
20 cited by Defendants do not support their position, including
21 *Sengoku*, the Merger Doctrine, and Defendants' standing.

22 ii. Defendants' Position Statement: Defendants incorporate their
23 legal positions above

24 iii. Plaintiff's Supporting Evidence: Notarized Deeds signed by
25 seller and buyer; USPTO filings including Registrations and
26 Assignments, testimony of Gregorio (Plaintiff's CEO),
27 Magsaysay (Cinco's CEO), Koren, Ybanez (Plaintiff's General
28

Counsel), FDDs, Franchise Agreements.

iv. Defendants' Supporting Evidence: Defendants incorporate their
above factual positions.

c. Element No. 3: Defendants used Word Mark, Slogan Mark, and/or the
Logo Mark in interstate commerce after May 31, 2024:

i. This element is undisputed.

d. Element No. 4: Defendants' use of the Word Mark, Slogan Mark,
and/or the Logo Mark in interstate commerce after May 31, 2024, was
without the consent of Plaintiff and in a manner likely to cause
confusion among ordinary consumers as to the source, sponsorship,
affiliation, or approval of the services.

ii. This element is disputed.

iii. Nature of Dispute: Legal and Factual

iv. Plaintiff's Legal Position: As for absence of consent, given the
absence of any ownership rights, Defendants must locate
some rights as a licensee of the owner (SPAVI). Defendants
offer two documents proffered as agreements that bind Cinco
to a perpetual license. Neither work as a matter of law. First,
they offer the unsigned October 10, 2010, document
containing terms for a Master License Agreement (Trial
Exhibit No. 11), which this Court (and the Ninth Circuit) have
reviewed. Both have interpreted it as a matter of law,
concluding that it is an unsigned draft (as Koren's testimony
has confirmed) and illusory because the licensor is given no
consideration for this purported agreement. The unsigned
document cannot, as a matter of law, have bound Cinco, even
through implied contract law, because Cinco did not do

1 anything in furtherance of that document to imply its assent.
2 Moreover, multiple times after October 10, 2010, documents
3 were signed stating that Cinco would be expecting a 30%
4 royalty recovery. Second, Plaintiffs point to § 3(g) of an
5 Amended Joint Venture Agreement (and its predecessor the
6 Joint Venture Agreement) – Trial Exhibit Nos. 8 and 9 – which
7 this Court has already interpreted to constitute an agreement to
8 agree, in the future, with Cinco on a license agreement. As the
9 Ninth Circuit said in affirming this conclusion, “the AJVA
10 contained an agreement to enter a *future* Master License
11 Agreement, not a “perpetual license” like PCJV claims.”
12 *Shakeys Pizza Asia Ventures, Inc. v. PCJV USA, LLC*, No. 24-
13 7084, 2025 WL 1431270, at *1 (9th Cir. May 19, 2025) (citing
14 *First Nat’l Mortg. Co. v. Fed. Realty Inv. Tr.*, 631 F.3d 1058,
15 1065 (9th Cir. 2011) (“[A]n ‘agreement to agree,’ without
16 more, is not a binding contract.”). This interpretation of the
17 AJVA and JVA is a legal conclusion, which, as affirmed by
18 the Ninth Circuit are legal conclusions, and, as such, these are
19 pure conclusions of law, which means: **this Court’s**
20 **conclusion that § 3(g) of the JVA and AJVA are**
21 **agreements to agree and do not bind Cinco to a**
22 **“perpetual license” are law of the case and cannot be**
23 **disturbed or challenged at trial.** This theory based on
24 interpretation of a contract has been considered and rejected by
25 this Court and the Ninth Circuit in this case, and because it is
26 a “pure issue[] of law, however, [it is] binding” on Defendants
27 under law of the case. *Ranchers Cattlemen Action Legal Fund*
28

1 *United Stockgrowers of Am. v. U.S. Dep't of Agr.*, 499 F.3d
2 1108, 1114 (9th Cir. 2007); *see, e.g. Arizona v. California*, 460
3 U.S. 605, 618 (1983) ((citing the rule as being “when a court
4 decides upon a rule of law, that decision should continue to
5 govern the same issues in subsequent stages in the same
6 case”). Defendants now trot out other theories such the fact
7 that the JVA and prior Operating Agreement are still
8 somewhat live under a theory of partial integration, however,
9 the following point prevails over each of these contortions:
10 Defendants can point to no agreement or document, or acct, or
11 statement, binding Cinco to a perpetual, irrevocable, royalty
12 free licensee of its Marks. As such, in the absence of any
13 written agreement, or documentation of any license terms, the
14 sole license that existed as of May 31, 2024, was implied and
15 terminable at will *See Pogrebnoy v. Russian Newspaper*
16 *Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal.
17 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018) (“[A]n implied
18 license, like any other contract, is terminable at the will of
19 either party if it is not for a specified term.”). One final flaw
20 exists in the attempt to bind Cinco to the AJVA, and that is
21 one of issue preclusion in favor of Plaintiffs. As evidenced by
22 Plaintiff's own Third Amended Complaint (verified) in the
23 Prior Governance Action, the entire pleading is based on the
24 theory that -- and it sought judgment concluding that -- Cinco
25 is an alter ego of the entity that was a 60% member of PCJV.
26 (See Trial Exhibit No. 1421 p. 7:3-14.) Such allegations,
27 having been dismissed, with prejudice, by Koren, re4nder
28

1 thee accusations extinguished, and, as such, Defendants are
2 precluded from alleging them ever again.

3 Regarding likelihood of confusion, which may be presumed,
4 and the jury may be so instructed “[w]here,’ as here, “a
5 licensee persists in the unauthorized use of a licensor's
6 trademark, courts have found that the continued use alone
7 establishes a likelihood of consumer confusion.” *Robert Trent*
8 *Jones II, Inc. v. GFSI, Inc.*, 537 F. Supp. 2d 1061, 1065 (N.D.
9 Cal. 2008) (citing and quoting *Sun Microsystems v. Microsoft*
10 *Corp.*, 999 F.Supp. 1301, 1311 (N.D.Cal.1998) (citing *Paisa,*
11 *Inc. v. N & G Auto, Inc.*, 928 F.Supp. 1009, 1012 n. 4
12 (C.D.Cal.1996); *Hollywood Athletic Club*, 938 F.Supp. at 614–
13 15 (C.D.Cal.1996)). The Sixth Circuit’s analysis in Max Rack,
14 Inc. v. Core Health & Fitness, LLC, 40 F.4th 454, 464 (6th Cir.
15 2022) is instructive:

16
17 “A separate body of law has developed for this
18 distinct claim that a holdover licensee has
19 continued to use a licensor's mark after their
20 agreement expired. *See* 4 McCarthy, *supra*, §
21 25:31 (citing cases). In this context, courts have
22 jettisoned the usual totality-of-the-circumstances
23 test in favor of a more categorical rule: “proof of
24 continued, unauthorized use of an original
25 trademark by one whose license to use the
26 trademark had been terminated is sufficient to
27 establish ‘likelihood of confusion.’ ” *U.S.*
28 *Structures, Inc. v. J.P. Structures, Inc.*, 130 F.3d
 1185, 1190 (6th Cir. 1997); *ITT Indus., Inc. v.*
 Wastecorp. Inc., 87 F. App'x 287, 293 (3d Cir.
 2004); *Gorenstein Enters., Inc. v. Quality Care-*
 USA, Inc., 874 F.2d 431, 435 (7th Cir. 1989);
 Burger King Corp. v. Mason, 710 F.2d 1480,

1492–93 (11th Cir. 1983); *Pro. Golfers Ass'n of Am. v. Bankers Life & Cas. Co.*, 514 F.2d 665, 670 (5th Cir. 1975); *L & L Wings, Inc. v. Marco-Destin, Inc.*, 676 F. Supp. 2d 179, 188 (S.D.N.Y. 2009). This rule makes good sense when a holdover licensee blatantly infringes the licensor's mark by using that mark in the same way as it did before the agreement expired. Without any need to tick through factors, it should be obvious that consumers will believe, for example, that a pizza restaurant remains affiliated with the “Little Caesars” chain when a terminated franchisee continues to operate the pizzeria as a Little Caesars. *See Little Caesar Enters., Inc. v. Miramar Quick Serv. Rest. Corp.*, 2020 WL 4516289, at *3 (6th Cir. 2020) (order)”

Although Plaintiff intends to, and will, adduce proof of the *Sleekcraft* factors, the presumption exists, and it is entitled to stand on this presumption alone.

v. Defendants’ Position Statement: Defendants incorporate all their above legal positions.

vi. Plaintiff’s Supporting Evidence: Trial Exhibit 29 (May 31, 2024 Termination); photographs of various stores taken from May 31, 2025 through the present; Testimony of Koren; Plaintiff executives Gregorio (Plaintiff’s CEO), Concepcion (Plaintiff’s COO charged with US operations), Tan (Director responsible for international franchising); investigator; Franchisees; Kim Lambert and Barry Kurtz; in addition to the following documents Amended Joint Venture Agreement and Joint Venture Agreement.

vii. Defendants’ Supporting Evidence: Defendants incorporate their above factual positions.

1 **3) Claim 9 (from FAC, Dkt. 65): Quantum Meruit Against PCJV**

2 a. Element No. 1: That Defendant requested, by words or conduct, that
3 Plaintiff provide a license to use the Potato Corner Intellectual
4 Property for the benefit of Defendant PCJV;

5 i. This element is disputed.

6 ii. Nature of Dispute: Legal and Factual

7 iii. Plaintiff's Position Statement: Defendants' issues are factual and
8 not legal.

9 iv. Defendants' Position Statement: *Quantum meruit* is an implied
10 contract (or quasi-contract) claim stemming from requested
11 services "under which a plaintiff who has rendered services
12 benefiting the defendant may recover the reasonable value of
13 those services when necessary to prevent unjust enrichment of
14 the defendant." *In re De Laurentiis Ent. Grp. Inc.*, 963 F.2d
15 1269, 1272 (9th Cir. 1992). Plaintiff will be unable to establish
16 liability for *quantum meruit* for three reasons: Defendants (1)
17 "requested" no (2) "services" from Plaintiff for which Plaintiff
18 had a (3) "reasonable expectation" of payment. *See McLeod v.*
19 *Zero Gravity Mgmt.*, 2:22-CV-01547-FWS-AGR, 2024 WL
20 3304527, at *10 (C.D. Cal. Jan. 8, 2024); *see also Corsini v.*
21 *Canyon Equity, LLC*, C-10-2061-JL, 2011 WL13247447, at *6
22 (N.D. Cal, May 23, 2011). Plaintiff's quantum meruit cause of
23 action does not contain critical elements of the cause of action.
24 *See* CACI No. 317.

25 v. Plaintiff's Supporting Evidence: Course of Dealings between
26 Defendants and SPAVI,. Specifically, Defendants have no
27 evidence of a written license to use SPAVI's Potato Corner
28

1 Intellectual Property, and, as such, its rights (that it has sold to
2 its franchisees) derive from what is, at best, a terminable at will,
3 fully revocable license because Defendants were nonetheless
4 operating Potato Corner locations, as if a written license existed.
5 *See Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 289 F.
6 Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291
7 (9th Cir. 2018) (“[A]n implied license, like any other contract, is
8 terminable at the will of either party if it is not for a specified
9 term.”). After SPAVI’s acquisition of the Potato Corner brand, it
10 became the licensor of the Potato Corner Intellectual Property.
11 Between December of 2021 through 2024, the months
12 immediately preceding this action, SPAVI engaged in a good
13 faith and exhaustive attempt to negotiate the terms of a written
14 license with PCJV. Defendant Guy Koren engaged and
15 participated in this negotiation; Testimony of Koren, Plaintiff
16 executives Gregorio (Plaintiff’s CEO), Concepcion (Plaintiff’s
17 COO charged with US operations), Tan (Director responsible
18 for international franchising), Magsaysay (Cinco’s CEO);
19 Emails and correspondence with SPAVI, Koren, and PCJV
20 relating to negotiations of a licensing agreement for the use of
21 the Potato Corner Intellectual Property; Amended Joint Venture
22 Agreement; Franchise Agreements; FDDs
23 vi. Defendants’ Supporting Evidence: (1) There was no request for
24 services; PCJV USA, LLC’s objected to Plaintiff’s transaction
25 with its former fiduciary and joint venture partner Cinco
26 Corporation and asserted its pre-existing rights to use and
27 control Potato Corner in the United States; it did not “request”
28

1 any services from Plaintiff; rather, PCJV USA, LLC's became
2 subject to an involuntary interloper in breach of Cinco
3 Corporation's fiduciary and contractual obligations; (2) No
4 "services" were provided by Plaintiff to PCJV USA, LLC's
5 within the meaning of *quantum meruit* even according to
6 Plaintiff's own authority cited in its Memorandum of
7 Contentions of Law and Fact (Dkt. No. 199, citing *Cosmonova,*
8 *LLC v. BioFilm, Inc.*, 763 F. Supp. 3d 1157 (S.D. Cal. 2025)
9 (dismissing quantum meruit claim)). Rather, Plaintiff allegedly
10 provided an implied "at-will" license allegedly extinguishing
11 PCJV USA, LLC's long-term right to use and/or to a long-term
12 license, which was beneficial to Plaintiff, indeed far more
13 beneficial to Plaintiff, and thus not a "service" within the
14 meaning of *quantum meruit*. *Cosmonova, LLC*, 763 F. Supp. 3d
15 at 1172. (3) Plaintiff had no reasonable expectation of any
16 royalty payment to Plaintiff for the same reason no royalty is
17 recoverable under the Lanham Act. Plaintiff never paid a royalty
18 to Cinco Corporation, no claim for breach of contract was
19 brought by Cinco Corporation, and Plaintiff cannot put itself
20 into a better situation than its assignor, Cinco Corporation. *See*
21 *McCarthy, supra*, § 18:15 ("It is elementary ancient law that an
22 assignee never stands in any better position than his
23 assignor....") (citation omitted). Defendants are simply seeking
24 a windfall or to punish Defendants' exercise of First
25 Amendment rights.

- 26 a. Element No. 2: That Plaintiff provided such license to use the Potato
27 Corner Intellectual Property as requested by Defendant PCJV.
28

- i. This element is disputed.
 - ii. Nature of Dispute: Legal and Factual
 - iii. Plaintiff's Position Statement: this is a factual dispute.
 - iv. Defendants' Position Statement: Defendant disputes Element 2 for the same reason they dispute Element 1.
 - v. Plaintiff's Supporting Evidence: Defendants have operated Potato Corner locations that utilize the Potato Corner Intellectual Property through what is, at best, a terminable at will, fully revocable license because Defendants were nonetheless operating Potato Corner locations, as if a written license existed. *See Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018) ("[A]n implied license, like any other contract, is terminable at the will of either party if it is not for a specified term."). SPAVI has consented to that use until the termination of the license agreement on May 31, 2024; Trial Exhibit 29 (May 31, 2024 Termination); Testimony of Concepcion (Plaintiff's COO charged with US operations), Tan (Director responsible for international franchising), Magsaysay (Cinco's CEO), Koren; Emails and correspondence with SPAVI, Koren, and PCJV relating to negotiations of a licensing agreement for the use of the Potato Corner Intellectual Property; Amended Joint Venture Agreement; Franchise Agreements; FDDs
 - vi. Defendants' Supporting Evidence: Defendant relies upon the same record evidence to dispute both Elements 1 and 2
- b. Element No. 3: That Defendant has not paid Plaintiff royalties or any

1 other compensation to Plaintiff for the use of the Potato Corner
2 Intellectual Property

3 i. This element is disputed.

4 ii. Nature of Dispute: Legal and Factual

5 iii. Plaintiff's Position Statement: Plaintiff does not know
6 what the issue is here.

7 iv. Defendants' Position Statement: Defendant disputes
8 Element 3 for the same reason they dispute Element 1.

9 v. Plaintiff's Supporting Evidence: Financial statements
10 produced by Defendants showing that there have been no
11 royalty fees paid to SPAVI; Testimony of Koren, Plaintiff
12 executives Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's
13 COO charged with US operations), Tan (Director responsible
14 for international franchising), Jose Magsaysay (Cinco's CEO)

15 vi. Defendants' Supporting Evidence: Defendant relies upon
16 the same record evidence to dispute both Elements 1 and 2.

17 c. Element No. 4: The reasonable value for the use of the Potato Corner
18 Intellectual Property that was provided.

19 i. This element is disputed.

20 ii. Nature of Dispute: Factual

21 v. Plaintiff's Supporting Evidence: Financial statements produced
22 by Defendants showing that there have been no royalty fees paid
23 to SPAVI; Testimony of Koren, Plaintiff executives Gregorio
24 (Plaintiff's CEO), Concepcion (Plaintiff's COO charged with
25 US operations), Tan (Director responsible for international
26 franchising), Jose Magsaysay (Cinco's CEO); Notarized Deeds
27 signed by seller and buyer; USPTO filings including
28

Registrations and Assignments

iii. Defendants' Supporting Evidence: The reasonable value is nominal or \$1.00 because the 15-year track record is equal payment of royalties and service fees (followed by and waiver in favor of growth). See McCarthy, supra, § 18:15 (“It is elementary ancient law that an assignee never stands in any better position than his assignor....”) (citation omitted).

4) Claim 10 (from FAC, Dkt. 65): Misappropriation of Trade Secrets

a. Element No. 1: That SPAVI owned the recipes, ingredients, and ingredient allocations for its proprietary flavorings, the identities of its suppliers, and other know-how, procedures, and processes used and employed at Potato Corner outlets, including outlets owned and/or operated by Defendants (“Potato Corner Trade Secrets”)

i. This element is disputed.

ii. Nature of Dispute: Legal and Factual

iii. Plaintiff’s Position Statement: SPAVI owned or controlled specific ingredients of the proprietary flavorings, the quantities of such ingredients, and the relative proportion of such ingredients,, including all steps taken to combine and mix specific ingredients, comprise of trade secrets.

iv. Defendants’ Position Statement: As a threshold matter, a trade secret could only comprise “information, including a formula, pattern, compilation, program, device, method, technique, or process.” Cal. Civ. Code 3426.1(d). SPAVI has not identified what “information” it claims Defendants misappropriated. “Flavors” is not information, and packaging

1 is an object. Thus, SPAVI cannot carry its burden to “identify
2 the trade secrets and carry the burden of showing they exist.”
3 *InteliClear, LLC v. ETC Global Holdings, Inc.*, 978 F.3d 653,
4 658. A flavor is an idea and catch-all phrase, which is not
5 protected. *Id.*; *Silvaco Data Systems v. Intel Corp.*, 184 Cal.
6 App. 4th 210, 220 (2010). Moreover, the plaintiff must “own”
7 the trade secret—meaning the plaintiff either has title to the
8 secret or has knowledge of the know how and licenses it with a
9 confidentiality obligation. *See Sinclair v. Aquarius*
10 *Electronics, Inc.*, 42 Cal.App.3d 216, 225-228 (1974) (trade
11 secret licensing involves sharing sensitive, undisclosed
12 information). A conclusory assignment from a prior reseller
13 with no knowledge of the trade secret does not establish the
14 required chain of title. *Memry Corp. v. Kentucky Oil*
15 *Technology, N.V.*, No. C-04-03843 RMW, 2006 WL 3734384,
16 at *5 (N.D. Cal. 2006). Here, there is no evidence of the
17 existence or ownership of trade secret information

18 v. Plaintiff’s Supporting Evidence: SPAVI owns all
19 trademarks, service marks, recipes, trade secrets, and other
20 intellectual property affiliated with the Potato Corner brand.
21 SPAVI acquired all of this intellectual property from the then-
22 owners, Cinco Corporation (“Cinco”), in a deal that closed in
23 2022. Additional evidence includes: Notarized Deeds signed
24 by seller and buyer; USPTO filings including Registrations
25 and Assignments, testimony of Gregorio (Plaintiff’s CEO),
26 Magsaysay (Cinco’s CEO), Tan (Director responsible for
27 international franchising),
28

vi. Defendants' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct. Among other things, Cinco Corporation's consent to reverse engineering of spices means that Plaintiff's predecessor did not know the alleged secret, did not own or have a trade secret license, and did not assign one to Plaintiff.

b. Element No. 2: That these Potato Corner Trade Secrets were a secret at the time of the misappropriation

i. This element is disputed

ii. Nature of Dispute: factual

iii. Plaintiff's Supporting Evidence: The Potato Corner brand is identifiable by its preparation of fries, which uses seven proprietary flavorings sold to SPAVI by one single supplier, the identity of which is confidential and not publicly known. The ingredients are not known outside the Potato Corner family, and the specific recipe (and proportions of each ingredient) are also kept secret. SPAVI maintains and benefits from the secrecy of the recipes and ingredient allocation of each flavoring and requires its supplier to protect that secrecy. The only persons with access to the flavoring packets delivered from the supplier (with ingredients listed but not quantities and proportions) are those bound by confidentiality and secrecy in favor. Anyone with access to the flavoring packages and ingredients is prohibited from using them for a purpose other than for the Potato Corner brand's benefit and may not misappropriate or take for themselves any of the

1 proprietary information embodied in those packets. Additional
2 evidence includes: The Franchise Disclosure Documents
3 (“FDD”); agreements with the Franchisees; testimony of
4 Gregorio (Plaintiff’s CEO), Magsaysay (Cinco’s CEO),
5 Ybanez (Plaintiff’s General Counsel), Tan (Director
6 responsible for international franchising), and Franchisees
7 iv. Defendants’ Supporting Evidence: supplier agreements;
8 third-party Ferna’s sale of spices to the public that SPAVI
9 contends are secret; Cinco Corporation’s consent for reverse
10 engineering of spices (meaning it did not know the alleged
11 secret and thus did not have a trade secret license); and
12 SPAVI’s lack of evidence demonstrating it maintain secrecy,
13 including but not limited to non-disclosure agreements,
14 physically locked storage of product and recipes alleged to be
15 trade secrets, use of two-factor authentication to access online
16 storage of recipes alleged to be trade secrets, monitoring and
17 securing of employees’ and agents’ communications and use
18 technology to transfer data to third parties, such as by way of
19 flash drives and cloud storage.

20 c. Element No. 3: That Defendants improperly acquired, used, or
21 disclosed the Potato Corner Trade Secrets

22 i. This element is disputed

23 ii. Nature of Dispute: Legal and Factual

24 iii. Plaintiff’s Position Statement: Defendants wrongfully
25 used or disclosed Potato Corner Trade Secrets by transferring
26 them to Third Parties despite acknowledging repeatedly that
27 they consisted of trade secrets in writings.
28

1 iv. Defendants' Position Statement: By statute, reverse
2 engineering is fair competition. It follows that, to establish
3 wrongful acquisition, use or disclosure, Plaintiff must establish
4 a legal duty in the acquisition of a product not to reverse
5 engineer it. However, Plaintiff denies and cannot establish any
6 legal duty between Plaintiff and Defendants as it affirmatively
7 alleges they are not fiduciaries, it did not assume obligations
8 and there is no privity of contract establishing any
9 confidentiality obligation between them

10 v. Plaintiff's Supporting Evidence: Both the JVA and AJVA
11 contain an agreement to agree on a Master License Agreement.
12 However, there was never a written license agreement between
13 Plaintiff and Defendants. After SPAVI acquired the Potato
14 Corner intellectual property rights, which included the Potato
15 Corner Trade Secrets, SPAVI engaged in a good faith and
16 exhaustive attempt to negotiate the terms of a written license
17 with Defendants. Defendant Guy Koren engaged and
18 participated in this negotiation, but was unwilling to agree to
19 any minimally commercially viable licensing terms. Moreover,
20 Guy Koren refused to, engage in reasonable and good faith
21 negotiation. Instead, he only offered royalty rates and license
22 fees that were more than 90% below what Koren had agreed to
23 be reasonable licensing fees over a decade prior. Koren also
24 repeatedly disengaged from the negotiation process, but still
25 was utilizing the Potato Corner Intellectual Property.
26 Therefore, SPAVI terminated the license agreement as of May
27 31, 2024. After the termination, Defendants improperly,
28

1 illegally, and unfairly misappropriated the flavoring packages
2 in their possession, which should have been returned
3 immediately following receipt of the May 31, 2024,
4 Termination Letter, and transferred possession of those
5 proprietary packages of flavorings to a third party for the
6 purpose of reverse-engineering the flavorings directly from the
7 packages themselves. Defendants also developed “Undercover
8 Fries” to roll out the reverse engineered fries to compete with
9 the Potato Corner brand while, at the same time, operating
10 Potato Corner outlets and being in possession of the Potato
11 Corner Intellectual Property, including the Potato Corner
12 Trade Secrets. Additional evidence includes: Franchisee
13 Photographs; Testimony from former franchisees, Concepcion
14 (Plaintiff’s COO charged with US operations), Koren,
15 investigator; the Franchise Agreements; FDDs; and leases, of
16 PCJV over the years.

17 i. Defendants’ Supporting Evidence: Superseding Joint Venture
18 (2008–2010), Alternative Licensing Arrangements and Ongoing
19 Ratification (2011–2012), Formalization and Modification of the
20 Joint Venture (2012), LA Group Partnership Agreement and
21 Evolving Business Dynamics and Terms (2013–2018), Dispute,
22 Litigation, and State Court Proceedings (2018 and Beyond), and
23 Ongoing Annual Ratification and Regulatory Compliance.

24 d. Element No. 4: That SPAVI was harmed and/or Defendants were
25 unjustly enriched by its use of the Potato Corner Trade Secrets

26 i. This element is disputed

27 ii. Nature of Dispute: Factual
28

1 iii. Plaintiff's Supporting Evidence: The secrecy of the Potato
2 Corner Trade Secrets holds value to SPAVI. The reverse
3 engineering was an unauthorized taking of a trade secret for
4 Defendants own personal benefit to open a competing store
5 "Undercover Fries". Additional evidence includes: Franchisee
6 Photographs; Testimony from former franchisees, Gregorio
7 (Plaintiff's CEO), Concepcion (Plaintiff's COO charged with
8 US operations), Ybanez (Plaintiff's General Counsel), Tan
9 (Director responsible for international franchising), and Koren;
10 the Franchise Agreements; FDDs; leases, of PCJV over the
11 years; and financial statements of Defendants.

12 iv. Defendants' Supporting Evidence: Defendants
13 incorporate their above factual positions

14 e. Element No. 5: Defendants acquisition, use, or disclosure of the Potato
15 Corner Trade Secrets was a substantial factor in causing Plaintiff's
16 harm or for Defendants to be unjustly enriched.

17 i. This element is disputed

18 ii. Nature of Dispute: Factual

19 iii. Plaintiff's Supporting Evidence: Defendants'
20 misappropriation, wrongful disclosure, and/or repudiation of
21 the existence of SPAVI's above-described trade secrets and
22 proprietary information, SPAVI has been damaged and
23 continues to be damaged. Evidence includes: Defendants
24 financials for the period in question May 31, 2024 through the
25 present; testimony of Gregorio (Plaintiff's CEO), Ybanez
26 (Plaintiff's General Counsel), Concepcion (Plaintiff's COO
27 charged with US operations), Tan (Director responsible for
28

international franchising), Koren, franchisees.

iv. Defendants' Supporting Evidence: Defendants incorporate their above factual positions

I. Defendants' Affirmative Defenses to be Tried by a Jury

1) Affirmative Defense No. 1: Waiver (asserted by all Defendants as to all claims alleged by SPAVI against them)

- a. Element No. 1: Through implied and/or express conduct, SPAVI knowingly waived a valid right, privilege, advantage, or benefit allegedly conferred upon it and its attempt to enforce that right, privilege, advantage, or benefit is thus barred.
- i. The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual and Legal
- iii. Defendants' Position Statement: The specific rights or privileges that have been waived include the alleged right to terminate PCJV USA, LLC's right to use the U.S. Potato Corner marks, and the alleged right to claim that the purchased seasoning packages were secret and improperly acquired. Plaintiff's enforcement waiver is based on Plaintiff and Plaintiff's predecessor's knowing acquiescence in PCVJ USA, LLC's use and quality control of Potato Corner in the United States, including before and after Plaintiff's alleged acquisition of the same. *See McCarthy, supra*, § 18:15 ("It is elementary ancient law that an assignee never stands in any better position than his assignor,' thus once an assignee has notice of an injunction against the assignor, it is bound to comply.") (citation omitted). Plaintiff's predecessor acquiesced for years in PCJV USA, LLC's use and quality contract. The fact of

1 Plaintiff's due diligence, negotiations, and alleged transaction
2 with Cinco Corporation before allegedly acquiring the U.S.
3 trademarks put Plaintiff on actual notice of PCJV USA, LLC's
4 use and control rights, and in response Plaintiff represented
5 that it would be bound by any agreements related to the
6 licensing of Potato Corner intellectual property in the United
7 State, and thereafter did not attempt to enforce any alleged
8 contrary right for years and then denied acquiring PCJV USA,
9 LLC's use and quality control rights. As to the commercial
10 sale of packaged seasonings, both Plaintiff and its predecessor
11 have known for years that they did not own them, that they
12 were publicly available for purchase in the market, and that it
13 was not improper to reverse engineer them, and Plaintiff
14 thereafter fulfilled an order and agreed to fulfill a second
15 order even after the alleged termination.

16 iv. Plaintiff's Position Statement: Defendants fail to identify any
17 specific right or privilege or benefit that was waived. The only
18 relationship between SPAVI and any Defendant, was that of
19 licensor to licensee, pursuant to an implied license. The only
20 right that SPAVI possessed was to terminate or negotiate. It
21 decision to wait to negotiate with Koren is not a waiver of
22 its right to terminate. Ironically, it is SPAVI that is alleging
23 that Defendants waived their right to claim the AJVA confers
24 perpetual licensing rights, after negotiating the terms of a
25 written license that would confer narrower rights for three
26 years without once taking the position that it did not need a
27 written license – a three year period during which much
28

1 occurred in reliance on Korenn's assent to the need for a
2 written license.

3 v. Defendants' Supporting Evidence: The PCJV USA Parties
4 intend to rely on testimony and also on a robust written
5 evidentiary record which demonstrates the parties' mutual
6 intentions and the evolution of their business relationship from
7 the inception through the present. The following categories
8 and chronology capture the key phases and supporting
9 evidence: *1. Superseding Joint Venture (2008–2010)*,
10 including (a) testimony and documentary evidence (i.e.,
11 communications and the original NKM Master License
12 Agreement) showing the parties' shared intent to bring Potato
13 Corner to the U.S., (b) exhibits reflecting the transition from a
14 simple license to a joint venture partnership in 2009-2010,
15 including meeting minutes, correspondence, and planning
16 documents from April/May 2010, (c) evidence of the July
17 2010 formation of PCJV USA, LLC as the master franchisor
18 for all U.S. and Israel operations, with PCJV granted all rights
19 to use and license the U.S. intellectual property ("Superseding
20 Joint Venture (2008–2010)"); *2. Alternative Licensing*
21 *Arrangements and Ongoing Ratification (2011–2012)*,
22 including (a) documents and communications (i.e., DLA Piper
23 records, regulatory filings, and Franchise Disclosure
24 Documents) evidencing the parties' reliance on an alternative
25 license agreement in 2011 for Cinco's benefit, which was
26 referenced and ratified in annual FDDs and other regulatory
27 filings, (b) evidence of the 2012 Master Services Agreement,
28

1 which authorized the LA Group to license the brand for an
2 indefinite duration, further reflecting the parties’ mutual
3 understanding and operational structure (“Alternative
4 Licensing Arrangements and Ongoing Ratification (2011–
5 2012)”); 3. *Formalization and Modification of the Joint*
6 *Venture (2012)*, including (a) executed copies of the Joint
7 Venture Agreement (JVA) and the LLC Operating Agreement
8 from August 2012, memorializing the parties’ rights,
9 obligations, and governance structure, (b) the First
10 Amendment to the JVA (October 2012), with supporting
11 meeting minutes, documenting specific modifications to the
12 parties’ governance protocols only (“Formalization and
13 Modification of the Joint Venture (2012)”); 4. *LA Group*
14 *Partnership Agreement and Evolving Business Dynamics and*
15 *Terms (2013–2018)*, including (a) the 2013 written partnership
16 agreement entered into by the LA Group, reflecting further
17 refinement of the parties’ roles and expectations, (b)
18 communications, board minutes, and negotiation records from
19 2015–2018 detailing ongoing discussions about operational
20 challenges, restructuring proposals (including Koren’s
21 potential acquisition of Cinco shares or the LA Group’s
22 acquisition of 100% of PCJV/PCI Trading), and a
23 contemplated new Master License Agreement for Cinco’s
24 benefit in exchange for 100% ownership in PCJV/PCI Trading
25 (“LA Group Partnership Agreement and Evolving Business
26 Dynamics and Terms (2013–2018)”); 5. *Dispute, Litigation,*
27 *and State Court Proceedings (2018 and Beyond)*, including (a)
28

1 evidence of the April 2018 board meeting and resolutions that
2 precipitated the state court litigation, including verified
3 pleadings, declarations, and court filings that set forth the
4 parties' mutual intentions and positions during the dispute,
5 including also, if necessary, settlement negotiation discussions
6 and the settlement and other agreements reached among the
7 parties, (b) additional documents and testimony from the state
8 court proceedings, including verified cross-complaints,
9 declarations, and orders, which further clarify the parties'
10 understanding and course of conduct ("Dispute, Litigation, and
11 State Court Proceedings (2018 and Beyond)"); 6. *Ongoing*
12 *Annual Ratification and Regulatory Compliance*, including
13 FDDs, regulatory filings, and correspondence with state
14 agencies, evidencing the parties' continued mutual recognition
15 of the licensing and franchising structure, as well as the
16 ratification of their agreements and operational practices
17 ("Ongoing Annual Ratification and Regulatory Compliance");
18 7. *SPAVI Parties' Tortious Conduct*, including a
19 comprehensive body of documents and testimony which
20 demonstrates the SPAVI parties' coordinated and wrongful
21 actions aimed at appropriating the business operations, supply
22 chain, and goodwill of the Potato Corner USA franchise
23 system for their own benefit, such as (a) testimony and
24 documentary evidence showing SPAVI's deliberate efforts to
25 undermine and take over PCJV's established franchise
26 network in the United States, (b) communications, internal
27 memoranda, and correspondence reflecting SPAVI's outreach
28

1 to PCJV franchisees, including direct offers of temporary
2 licenses and inducements to sever ties with PCJV, as detailed
3 in termination letters and related notices, (c) evidence of
4 SPAVI's attempts to bypass PCJV's role as franchisor by
5 negotiating directly with third-party franchisees, thereby
6 disrupting existing contractual relationships and causing
7 business uncertainty, (d) documents and witness statements
8 establishing SPAVI's interference with PCI Trading's
9 procurement and distribution of supplies, (e) testimony
10 regarding SPAVI's refusal to supply powders to PCJV and its
11 franchisees following the purported termination of the license,
12 thereby jeopardizing ongoing operations and franchisee
13 livelihoods, (f) evidence of SPAVI's efforts to control or
14 redirect supplier relationships, including attempts to obtain
15 confidential supplier information and to assert exclusive rights
16 over the sourcing and distribution of Potato Corner products in
17 the U.S., (g) testimony and exhibits documenting SPAVI's use
18 of the established Potato Corner USA brand reputation and
19 customer base to promote its own interests, including public
20 statements, regulatory filings, and direct communications with
21 franchisees and suppliers, (h) rather than simply seeking
22 declaratory relief, SPAVI's own conduct has interjected
23 potential confusion in the marketplace, including the
24 unauthorized use of trademarks, solicitation of franchisees, and
25 dissemination of misleading information regarding the status
26 of the franchise system and intellectual property rights, (i)
27 documents showing SPAVI's attempts to claim ownership of
28

1 the goodwill and business relationships cultivated by PCJV
2 and PCI Trading over years of operation, despite the absence
3 of any direct contractual relationship with many U.S.
4 franchisees prior to the dispute, (j) evidence of the resulting
5 harm to PCJV, PCI Trading, and the broader franchise
6 network, including lost business opportunities, damaged
7 supplier relationships, and erosion of brand value and goodwill
8 (“SPAVI Parties’ Tortious Conduct”).

9 vi. Plaintiff’s Supporting Evidence: testimony of the negotiators
10 from 2021 through 2024 including Mr. Gregorio and Mr. Tan
11 (from SSPAVI), their correspondence with Koren and his
12 testimony, the NKM License agreement and the JVA and
13 AJVA (none of which SPAAVI is a party to or conferred
14 rights that SPAVI is responsible for. The absence of
15 contractual privity or otherwise is what disproves this
16 affirmative defense.

17 b. Causes of Action Barred by this Affirmative Defense: all of SPAVI’s
18 causes of action

19 **2) Affirmative Defense No. 2: In Pari Delicto (asserted as to all of**
20 **SPAVI’s causes of action).**

21 a. Element No. 1: Plaintiff and Defendants have substantially equal
22 economic strength.

23 i. This element is not in dispute.

24 b. Element No. 2: Plaintiff is at least equally responsible for the harmful
25 conduct as Defendants.

26 i. Disputed Status of Element 2: The parties dispute that this
27 element is satisfied.
28

- ii. Nature of Dispute: Legal and Factual
 - iii. Defendants' Position Statement: Defendants' elements precisely follow CACI No. 3431
 - iv. Plaintiff's Position Statement: the statement of these elements omit that to apply "in pari dilecto" requires that SPPAVI have engaged in "illegal, fraudulent, or inequitable conduct," and that has never been alleged, nor is there any evidence of this.
 - v. Defendant's Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.
 - vi. Plaintiff's Supporting Evidence: testimony of the negotiators from 2021 through 2024 including Mr. Gregorio and Mr. Tan (from SSPAVI), their correspondence with Koren and his testimony, the NKM License agreement and the JVA and AJVA (none of which SPAAVI is a party to or conferred rights that SPAVI is responsible for. The absence of contractual privity or otherwise is what disproves this affirmative defense.
- c. Element No. 3: Plaintiff was not held by economic pressure to engage in harmful conduct.
- i. Disputed Status of Element 3: The parties dispute that this element is satisfied.
 - ii. Nature of Dispute: Legal and Factual.
 - iii. Defendants' Position Statement: Defendants' elements precisely follow CACI No. 3431.
 - iv. Plaintiff's Position Statement: the statement of these elements omit that to apply "in pari dilecto" requires that SPPAVI have engaged in "illegal, fraudulent, or inequitable conduct," and

1 that has never been alleged, nor is there any evidence of this.

2 v. Defendant's Supporting Evidence: documents and testimony
3 including and related to (1) PCJV USA, LLC's right to use
4 Potato Corner IP and quality control rights related thereto under
5 PCJV USA, LLC's governing documents, including agreements
6 and related negotiations, franchise disclosure documents and
7 board minutes; (2) the parties' course of conduct regarding
8 PCJV USA, LLC's use and control of U.S. Potato Corner
9 trademarks; (3) the fact of SPAVI's due diligence, negotiations,
10 and alleged acquisition of Cinco Corporation's assets and
11 liabilities; (4) SPAVI's denial of acquiring any IP rights or
12 obligations under PCJV's governing documents; (5) SPAVI's
13 statement that it would be bound by a settlement with Cinco; (6)
14 SPAVI's knowing failure to do anything for years regarding
15 PCJV USA Parties' full exercise of its right to use and quality
16 control; and (7) SPAVI's decision to renege on a purchase order,
17 creating a short-term supply chain problem.

18 vi. Plaintiff's Supporting Evidence: testimony of the negotiators
19 from 2021 through 2024 including Mr. Gregorio and Mr. Tan
20 (from SSPAVI), their correspondence with Koren and his
21 testimony, the NKM License agreement and the JVA and
22 AJVA (none of which SPAAVI is a party to or conferred rights
23 that SPAVI is responsible for. The absence of contractual
24 privity or otherwise is what disproves this affirmative defense.

25 d. Causes of Action Barred by this Affirmative Defense: all of SPAVI's
26 causes of action.

27 **3) Affirmative Defense No. 3: Statute of Limitations. (asserted as to all of**
28

SPAVI's causes of action)

a. Element No. 1: SPAVI (either independently or as successor-in-interest to Cinco) knew, should have known, or had constructive notice of PCJV USA Parties' alleged infringing conduct over three years before SPAVI filed this action.

i. The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual

iii. Defendant's Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.

iv. Plaintiff's Supporting Evidence: Testimony off Mr. Gregorio (CEO of SPAVI) regarding termination of negotiations and sending the Termination Letter hours before this lawsuit was filed, such that, unless the statute of limitations is calculated by way of hours rather than years, this defense is an impossibility.

b. Causes of Action Barred by this Affirmative Defense: all of SPAVI's causes of action.

4) Affirmative Defense No. 4: Abandonment through Assignment in Gross.

a. Element No. 1: Cinco Corporation assigned U.S. Potato Corner trademarks to SPAVI without the goodwill associated with the

trademarks.

i. The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual and Legal

iii. Defendants' Supporting Legal Position: Trademarks cannot be assigned or transferred apart from the goodwill of the business they represent. *See Federal Treasury Enterprise Sojuzplodoimport v. Spirits Intern. N.V.*, 623 F.3d 61, 68 (2d Cir. 2010); *Glow Industries, Inc. v. Lopez*, 273 F. Supp. 2d 1095, 1108 (C.D. Cal. 2003); *Hallmark Hardwoods, Inv. v. Omni Wood Product, LLC*, 2011 WL 13176098, *15 (C.D. Cal. 2011); *In re Impact Distributors, Inc.*, 260 B.R. 48, 53-55 (S.D. Fla. 2001); *Money Store v. Harriscorp Fin., Inc.*, 689 F.2d 666, 670 (7th Cir. 1982).

iv. Plaintiff's Supporting Legal Position: this is a factual dispute. Plaintiff argues that it did receive goodwill, while Defendants argue that we did not.

v. Defendants' Supporting Evidence: documents and testimony including and related to (1) Defendants' senior use and quality control of U.S. Potato Corner trademarks; (2) PCJV USA, LLC's governing documents, including agreements and related negotiations, franchise disclosure documents and board minutes; (3) the parties' course of conduct regarding PCJV USA, LLC's use and control of U.S. Potato Corner trademarks; (4) SPAVI's knowledge of the same; (5) Defendants' Membership Interest Purchase Agreement ("MIPA") with Cinco acquiring all of Cinco's Interests in and any and all rights "attached" thereto unencumbered by a need for a license from any third party; and

(6) the fact of SPAVI's due diligence, negotiation, and alleged acquisition of Cinco Corporation's assets and liabilities, and denial of acquiring PCJV's Potato Corner franchise business and any IP rights or obligations under PCJV's governing documents.

vi. Plaintiff's Supporting Evidence: the deeds filed with the USPTO, proof of intent to continue using the marks,, including plans to expand rapidly within the US (testimony of SPAVI executives charged with this expansion, including Mr. Gregorio, Mr. Tann, and Mr. Concepcion, the COO.)

b. Causes of Action Barred by this Affirmative Defense: SPAVI's causes of action for Trademark Infringement (15 U.S.C. § 1114), Trademark Infringement (15 U.S.C. § 1125(a)), False Designation of Origin and Description of Fact (15 U.S.C. § 1125(a)), Contributory Trademark Infringement (15 U.S.C. § 1114), Contributory Trademark and False Designation of Fact (15 U.S.C. § 1125(a)), Common Law Trademark Infringement, Declaratory Relief and Unfair Competition (Bus. & Prof. Code § 17200).

5) Affirmative Defense No. 5: Abandonment through Naked Licensing.

a. Element No. 1: SPAVI Parties (including Cinco's) alleged licensed use of U.S. Potato Corner trademarks to PCJV USA Parties.

i. This element is disputed.

ii. Nature of the dispute: Legal

iii. Defendants' Position Statement: Defendants assert both ownership and use rights arising from naked licensing, i.e., authorization to use without adequate control. Ownership arises from Cinco Corporation's naked license because it barred the sale of any trademark rights to Plaintiff, and the PCJV USA

1 Parties acquired all of Cinco Corporation's Interests and rights
2 in Potato Corner in the United States in their settlement and
3 MIPA. Ownership also arises from Plaintiff's naked licensing
4 because PCJV USA, LLC is a senior user of the mark, including
5 because Plaintiff never had any right to control Potato Corner in
6 the United States, did not exercise control over Potato Corner in
7 the United States, and had no grounds to believe PCJV USA,
8 LLC would listen to or take any instruction from SPAVI.

9 iv. Plaintiff's Supporting Legal Position: the wording of this
10 element, however, is going to be confusing to a jury. If it is
11 PCJV's position that it was not even a licensee as of May 31,
12 2024, the damages calculation will change considerably.

13 b. Element No. 2: SPAVI Parties (including Cinco) did not exercise
14 adequate control over PCJV USA Parties' use of U.S. Potato Corner
15 trademarks.

16 i. The parties dispute that this element is satisfied.

17 ii. Nature of Dispute: Factual and Legal.

18 iii. Defendant's Supporting Legal Position: Defendants assert both
19 ownership and use rights arising from naked licensing, *i.e.*,
20 authorization to use without adequate control. Ownership arises
21 from Cinco Corporation's naked license because it barred the
22 sale of any trademark rights to Plaintiff, and the PCJV USA
23 Parties acquired all of Cinco Corporation's Interests and rights
24 in Potato Corner in the United States in their settlement and
25 MIPA. Ownership also arises from Plaintiff's naked licensing
26 because PCJV USA, LLC is a senior user of the mark, including
27 because Plaintiff never had any right to control Potato Corner in
28

1 the United States, did not exercise control over Potato Corner in
2 the United States, and had no grounds to believe PCJV USA,
3 LLC would listen to or take any instruction from SPAVI.

4 iv. Plaintiff's Supporting Legal Position: First, this is an incorrect
5 statement of the law, as the focus is less so on the use of the
6 Marks, but more so on the nature and quality of the goods and/or
7 services sold by the licensee. Second, though unsatisfying in its
8 failure to conclusively resolve the debate, in the Ninth Circuit
9 this defense likely requires a showing of clear and convincing
10 evidence. FreecycleSunnyvale v. Freecycle Network, 626 F.3d
11 509, 514 (9th Cir. 2010)

12 v. Defendants' Supporting Evidence: the following categories,
13 which are defined above, capture the key phases and supporting
14 evidence: Superseding Joint Venture (2008–2010), Alternative
15 Licensing Arrangements and Ongoing Ratification (2011–2012),
16 Formalization and Modification of the Joint Venture (2012), LA
17 Group Partnership Agreement and Evolving Business Dynamics
18 and Terms (2013–2018), Dispute, Litigation, and State Court
19 Proceedings (2018 and Beyond), Ongoing Annual Ratification
20 and Regulatory Compliance, and SPAVI Parties' Tortious
21 Conduct.

22 vi. Plaintiff's Supporting Evidence: Pursuant to the three
23 considerations as to whether naked licensing has occurred, as
24 summarized in F19 Franchising, LLC v. Endo Fitness LL, LLC,
25 No. 2:23-CV-00185-MEMF-JCX, 2023 WL 11950376, at *6–9
26 (C.D. Cal. July 28, 2023), this is the one issue for trial in which
27 the prior action is actually relevant,, as it sets forth that efforts to
28

1 exert control, as do the prior correspondence between Cinco and
2 PCJV, and, moreover, the course of dealing prior to termination
3 establishes the attempts to get control.

4 c. Causes of Action Barred by this Affirmative Defense: SPAVI's causes
5 of action for Trademark Infringement (15 U.S.C. § 1114), Trademark
6 Infringement (15 U.S.C. § 1125(a)), False Designation of Origin and
7 Description of Fact (15 U.S.C. § 1125(a)), Contributory Trademark
8 Infringement (15 U.S.C. § 1114), Contributory Trademark and False
9 Designation of Fact (15 U.S.C. § 1125(a)), Common Law Trademark
10 Infringement, Declaratory Relief and Unfair Competition (Bus. &
11 Prof. Code § 17200).

12 **6) Affirmative Defense No. 6: Continuous Prior Use Within Remote**
13 **Geographic Area.**

14 a. Element No. 1: Defendants continuously used the trademark, without
15 interruption, in the U.S.

16 i. The parties dispute that this element is satisfied.

17 ii. Nature of Dispute: Legal and factual.

18 iii. Defendants' Supporting Legal Position: (1) PCJV USA, LLC's
19 is the senior use under *Sengoku*, including actual first use
20 (restructure in 2009) and lawful first use, *see CreAgri, Inc. v.*
21 *USANA Health Services, Inc.*, 474 F3d 626, 630 (9th Cir. 2007);
22 (2) but for a license agreement, which SPAVI Parties disavow,
23 PCJV USA, LLC's use inured to its own benefit; (3) Cinco
24 Corporation did not control PCJV USA, LLC's use of the Potato
25 Corner marks; and (4) SPAVI Parties did not control PCJV
26 USA, LLC's use of the Potato Corner marks.

27 iv. Plaintiff's Supporting Legal Position: See 15 USC §1055. This
28

1 argument is not made in good faith.

2 v. Defendants' Supporting Evidence: the following categories,
3 which are defined above, capture the key phases and supporting
4 evidence: Superseding Joint Venture (2008–2010), Alternative
5 Licensing Arrangements and Ongoing Ratification (2011–2012),
6 Formalization and Modification of the Joint Venture (2012), LA
7 Group Partnership Agreement and Evolving Business Dynamics
8 and Terms (2013–2018), Dispute, Litigation, and State Court
9 Proceedings (2018 and Beyond).

10 vi. Plaintiff's Supporting Evidence: All evidence presented in
11 Plaintiffs' case in chief will prove the defense of this.

12 b. Element No. 2: Defendants began using the trademark without
13 knowledge of SPAVI's prior use elsewhere.

14 i. Disputed Status of Element 2: The parties dispute that this
15 element is satisfied.

16 ii. Nature of Dispute: Factual.

17 iii. Defendants' Supporting Evidence: the following categories,
18 which are defined above, capture the key phases and supporting
19 evidence: Superseding Joint Venture (2008–2010), Alternative
20 Licensing Arrangements and Ongoing Ratification (2011–2012),
21 Formalization and Modification of the Joint Venture (2012), LA
22 Group Partnership Agreement and Evolving Business Dynamics
23 and Terms (2013–2018), Dispute, Litigation, and State Court
24 Proceedings (2018 and Beyond).

25 iv. Plaintiff's Supporting Evidence: Koren testimony, registrations.

26 c. Element No. 3: Defendants used the trademark before SPAVI
27 published the registered trademark.
28

- i. Disputed Status of Element 3: The parties dispute that this element is satisfied.
 - ii. Nature of Dispute: factual.
 - iii. Defendants' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond).
 - iv. Plaintiff's Supporting Evidence: 15 USC § 1055. This argument is not made in good faith
- d. Causes of Action Barred by this Affirmative Defense: SPAVI's causes of action for Trademark Infringement (15 U.S.C. § 1114), Trademark Infringement (15 U.S.C. § 1125(a)), False Designation of Origin and Description of Fact (15 U.S.C. § 1125(a)), Contributory Trademark Infringement (15 U.S.C. § 1114), Contributory Trademark and False Designation of Fact (15 U.S.C. § 1125(a)), Common Law Trademark Infringement, Declaratory Relief and Unfair Competition (Bus. & Prof. Code § 17200).

7) Affirmative Defense No. 7: Mitigation.

- a. Element No. 1: SPAVI failed to use reasonable efforts to mitigate alleged damages.
 - i. The parties dispute that this element is satisfied.
 - ii. Nature of Dispute: Factual.
 - iii. Defendants' Supporting Evidence: the following category,

1 which is defined above, captures the key phase and supporting
2 evidence: SPAVI Parties' Tortious Conduct.

3 iv. Plaintiff's Supporting Evidence: Plaintiff looks forward to
4 presenting the jury with every effort taken to get PCJV and
5 Koren to either pay for or stop, finally, using this brand for
6 which he has never paid to benefit from, whether that was
7 negotiating a license, terminating the license or other attempts.

8 b. Element No. 2: the amount by which damages would have been
9 mitigated.

10 i. The parties dispute that this element is satisfied.

11 ii. Nature of Dispute: Factual.

12 iii. Defendants' Supporting Evidence: the following category,
13 which is defined above, captures the key phase and supporting
14 evidence: SPAVI Parties' Tortious Conduct.

15 iv. Plaintiff's Supporting Evidence: Testimony of Koren, Gregorio,
16 Victor Tan, Financial documents.

17 c. Causes of Action Barred by this Affirmative Defense: All of SPAVI
18 Parties' causes of action (to the extent they seek damages).

19 **8) Affirmative Defense No. 8: Senior Use Trademark Ownership**

20 a. Element No. 1: At the time of first lawful use, the partnership and JVA
21 evidence co-ownership of the U.S. Potato Corner marks.

22 i. Disputed Status of Element 1: The parties dispute that this
23 element is satisfied.

24 ii. Nature of Dispute: Legal and factual.

25 iii. Defendants' Position Statement: The partnership and joint
26 venture agreement between PCJV USA, LLC's LA Group and
27 Cinco Group recognize and support per their terms and
28

1 conditions that PCJV USA, LLC—the first actual, lawful,
2 continuous and exclusive user of the U.S. Potato Corner
3 marks—owns the U.S. Potato Corner marks (which was the LA
4 Group’s long-term security and consideration) at least until the
5 parties executed the contemplated master license agreement
6 (which was the Cinco Group’s consideration) that they both
7 agreed to enter into in accordance with their fiduciary and
8 contractual obligations, but which still treated them as joint
9 venture partners. *See Sengoku Works Ltd. v. RMC Int’l, Ltd.*, 96
10 F.3d 1217, 1219 (9th Cir. 1996); *Optimal Pets, Inc. v. Nutri-Vet,*
11 *LLC*, 877 F. Supp. 953, 959 (C.D. Cal. 2012); *cf. Precision*
12 *Door Service, Inc. v. Bell*, No. C 02–01108 CW, 2002 WL
13 655053, at *6 (N.D. Cal April 18, 2002). Given that Plaintiff is
14 disavowing the license agreement—meaning the factual basis
15 upon which PCJV USA, LLC’s use might inure to Cinco
16 Corporation’s benefit did not happen—the operative
17 coownership agreements favor Defendants or, at minimum, are
18 not dispositive as to ownership. Plaintiff does not get ownership
19 by default because all exclusive users under *Sengoku* are alleged
20 “related companies.” Under *Sengoku*, an alleged “related
21 company” who is an exclusive user in the United States, gets to
22 rebut that presumption, especially where, as here, the registrant
23 filed an intent to use application that would only evidence senior
24 use if the exclusive user’s first actual and lawful use inured to its
25 benefit. Under the partnership and joint venture agreement,
26 which “vested” in the joint venture and exclusive user complete
27 licensing rights and obligations in the United States, approval of
28

1 franchise agreements, including as disclosed in FDDs,
2 restrictions on transfer, payment of equal royalties and service
3 fees, and lifetime rights to license and quality control over
4 Potato Corner in the United States, it plainly supports ownership
5 in the joint venture or, at minimum, is not dispositive. The jury
6 is entitled to consider the following five factors used in the
7 Ninth Circuit to help determine ownership as between PCJV
8 USA, LLC, an exclusive domestic user, and Plaintiff, an
9 assignee of a foreign registrant, which plainly demonstrate that
10 PCJV USA, LLC owns the U.S. marks unless and until there
11 was a meeting of the minds on an enforceable license
12 agreement: (1) which party invented and affixed the mark to the
13 product; (2) which party's name appeared with the trademark;
14 (3) which party maintained the product's quality and uniformity;
15 (4) which party does the public identify with the product and
16 make complaints to; and (5) which party possesses the goodwill
17 associated with the product.

18 iv. Plaintiff's Position Statement: This misstates the Lanhan act and
19 the rules of priority. *See Yagu*. And *Sengoku*. See 15 USC
20 § 1055. This argument is not made in good faith. It is also law of
21 the case.

22 v. Defendants' Supporting Evidence: documents and testimony
23 including and related to (1) DLA Piper's notification of Cinco
24 Corporation's unlawful use of Potato Corner in the United
25 States; (2) the State of California's Department of Business
26 Oversight's Order sanctioning PCJV USA, LLC for Cinco
27 Corporation's alleged prior use of Potato Corner in the United
28

1 States; (3) the superseding and restructure agreement between
2 Guy Koren and Jose Magsaysay vesting ownership of Potato
3 Corner in their partnership; (4) the joint venture agreement
4 vesting co-ownership of Potato Corner in the United States in
5 PCJV USA, LLC; (5) control over Potato Corner in the United
6 States being vested with and exercised by PCJV USA, LLC; (6)
7 Potato Corner USA being affixed to Potato Corner in the United
8 States; (7) consumer association of Potato Corner in the United
9 States with PCJV USA, LLC, to whom complaints, if any, were
10 lodged; (8) PCJV USA, LLC's creation, development and hold
11 over the goodwill of Potato Corner in the United States for over
12 a decade; (9) Cinco's lack of control of Potato Corner in the
13 United States for over a decade; (10) Plaintiff's lack of control
14 of Potato Corner in the United States after it allegedly acquired
15 the U.S. trademarks and before it registered additional Potato
16 Corner trademarks; and (11) Plaintiff's suppression of evidence
17 relevant to ownership.

18 vi. Plaintiff's Supporting Evidence: The registration and Koren's
19 admissions regarding control. Testimony of Koren and Mr.
20 Magsaysay.

21 b. Element No. 2 (if Element No. 1 is not dispositive): The following
22 factors demonstrate PCJV USA, LLC owns the U.S. Potato Corner
23 Trademarks: (1) which party invented and affixed the mark to the
24 product; (2) which party's name appeared with the trademark; (3)
25 which party maintained the product's quality and uniformity; (4)
26 which party does the public identify with the product and make
27
28

complaints to; and (5) which party possesses the goodwill associated with the product.

- i. Disputed Status of Element 3: The parties dispute that this element is satisfied.
 - ii. Nature of Dispute: Legal and factual.
 - iii. Defendants' Position Statement: Defendants incorporate the above legal position.
 - iv. Plaintiff's Position Statement: this is incomprehensible and not made in good faith.
 - v. Defendants' Supporting Evidence: Defendants incorporate the above reference to evidentiary support.
 - vi. Plaintiff's Supporting Evidence: this is incomprehensible and not made in good faith. Testimony of Gregorio, Tan, Concepcion, and Shaikh and Hussein.
- c. Causes of Action Barred by this Affirmative Defense: SPAVI's causes of action for Trademark Infringement (15 U.S.C. § 1114), Trademark Infringement (15 U.S.C. § 1125(a)), False Designation of Origin and Description of Fact (15 U.S.C. § 1125(a)), Contributory Trademark Infringement (15 U.S.C. § 1114), Contributory Trademark and False Designation of Fact (15 U.S.C. § 1125(a)), Common Law Trademark Infringement, Declaratory Relief and Unfair Competition (Bus. & Prof. Code § 17200).

II. Counterclaimants and Third Party Plaintiffs' ("PCJV USA Parties")

Causes of Action to be Tried by a Jury

1) Cause of Action No. 2: Inducing Breach of Contract

- b. Element No. 1: there was a contract between any one of the PCJV USA Parties, on the one hand, and any one of the Cinco parties

(inclusive of the “Cinco Group” and “PCI Group”) or franchisees on the other hand.

- i. Disputed Status of Element 1: The parties dispute this element is satisfied.
- ii. Nature of Dispute: factual and legal
- iii. PCJV USA Parties Legal Position Statement: The term for PCJV USA, LLC’s use of the U.S. Potato Corner trademarks “can be [i]mplied from the nature of the contract and circumstances surrounding it.” *See Consolidated Theatres, Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713, 725 (1968). The “initial effort of the court, in construing contracts of continuing performance of forbearance which contain no express term of duration, must always be that of implying a term of duration commensurate with the intentions of the parties” *Id.* at 727. Only when “the nature of the contract and the totality of the surrounding circumstances give no suggestion as to any ascertainable term . . . , the obligations under the contract shall be terminable at will by any party upon reasonable notice after such a reasonable time has elapsed.” *Id.* Further, it is immaterial that SPAVI had full knowledge of the contracts’ terms. *See Jenni Rivera Enterprises, LLC v. Latin World Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766, 783 (2019). Nor is SPAVI’s belief about the legal significance of facts or belief that the parties’ agreements are legally binding or has a different legal effect from what it is judicially held to have. *See Little v. Amber Hotel Co.*, 202

1 Cal. App. 4th 280, 302 (2011).

2 iv. Plaintiff's Position Statement: as drafted it is impossible to
3 know what the specific contract is that is at issue here. It has
4 never been disclosed, and still undisclosed. Rather than
5 jettison the claim or actually identify the contract, instead,
6 Defendants' solution is to fudge with obtuse language in the
7 jury instructions, designed to confuse everyone, including the
8 jury: "there was a contract between any one of the PCJV
9 Plaintiffs and any one of the Cinco parties." Indeed, the only
10 contract that Cinco has been a party to with any of these
11 Counterclaimants is the Settlement Agreement of the Prior
12 Governance Action. There is no other written agreement
13 between PCJV and Cinco, or between any other
14 Counterclaimant and Cinco.

15 v. PCJV USA Parties' Supporting Evidence: the following
16 categories, which are defined above, capture the key phases
17 and supporting evidence: Superseding Joint Venture (2008–
18 2010), Alternative Licensing Arrangements and Ongoing
19 Ratification (2011–2012), Formalization and Modification of
20 the Joint Venture (2012), LA Group Partnership Agreement
21 and Evolving Business Dynamics and Terms (2013–2018),
22 Dispute, Litigation, and State Court Proceedings (2018 and
23 Beyond), and Ongoing Annual Ratification and Regulatory
24 Compliance.

25 vi. SPAVI and Cinco Parties' Supporting Evidence: Each of the
26 agreements included in the trial exhibits and testimony of
27 Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which
28

1 will establish that none of the Counterclaimants – PCJV,
2 PCIT, LA Group LLC, GK Capital, NKM, or Koren have
3 any contract to which Cinco has privity.

4 c. Element No. 2: SPAVI knew of the contract.

5 i. Disputed Status of Element 2: The parties dispute this
6 element is satisfied.

7 ii. Nature of Dispute: factual and legal.

8 iii. PCJV USA Parties Legal Position Statement: “the contract”
9 refers to each and every applicable contract, including all
10 written, oral, and/or implied-in-fact agreements between the
11 “Cinco Group” and/or “PCI Group,” on the one hand, and
12 Cross-Complainants PCJV, PCI Trading, LA Group, GK
13 Capital, NKM, and Koren, on the other hand, inclusive of the
14 JVA/AJVA, LLC Agreement, license agreements, MSA (as
15 restated, amended, modified, or appended over time through
16 PCJV meeting minutes, written communications of the PCJV
17 Board, and/or representations made in FDDs); (2) the
18 Settlement Documents between the “Koren Parties” and
19 “Cinco Parties”; and (3) the franchise agreements PCJV
20 entered with franchisees. Plaintiff’s position statement does
21 not assert a legal argument

22 iv. SPAVI and Cinco’s Position Statement: as drafted it is
23 impossible to know what the specific contract is at issue
24 here. It has never been disclosed, and still undisclosed. So,
25 when this element in the instructions says, “the contract,”
26 whereas the prior element refers to some unidentified
27 contract, as a matter of law, yes, this element is disputed. To
28

1 the extent any actual contract ever existed between Cinco and
2 these parties, the only one that is possible is the Settlement
3 Agreement and corresponding agreement selling PCJV
4 equity to GKK Capital. (Trial Exhibit 1176.) Because Cinco
5 has never been a party to any other contract with any of the
6 Counterclaim Defendants, that is the only one that could
7 possibly be at issue, but Defendants refuse to acknowledge
8 this.

9 v. PCJV USA Parties' Supporting Evidence: the following
10 category, which is defined above, captures the key phase and
11 supporting evidence: SPAVI Parties' Tortious Conduct.

12 vi. SPAVI and Cinco Parties' Supporting Evidence: Each of the
13 agreements included in the trial exhibits and testimony of
14 Mr. Gregorio, Mr. Tan, Ms. Victor, as well as Mr. Koren –
15 all of which will establish that were aware of no contract
16 between none of the Counterclaimants – PCJV, PCIT, LA
17 Group LLC, GK Capital, NKM, or Koren have any contract
18 to which Cinco has privity. After the fact, now, having been
19 sued, SPAVI will unequivocally testify that it had knowledge
20 of the terms off the settlement and never saw the document
21 until this case commenced.

22 d. Element No. 3: SPAVI intended to cause any one of the Cinco
23 parties or franchisees to breach the contract

24 i. Disputed Status of Element 3: The parties dispute this
25 element is satisfied.

26 ii. Nature of Dispute: factual and legal.

27 iii. PCJV USA Parties' Position Statement: Plaintiff's position
28

statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here.

iv. Plaintiff's Position Statement: as drafted it is impossible to know what the specific contract is at issue here. It has never been disclosed, and still undisclosed. So, when this element in the instructions says, "the contract," whereas the prior element refers to some unidentified contract, as a matter of law, yes, this element is disputed. To the extent any actual contract ever existed between Cinco and these parties, the only one that is possible is the Settlement Agreement and corresponding agreement selling PCJV equity to GKK Capital. (Trial Exhibit 1176.) Because Cinco has never been a party to any other contract with any of the Counterclaim Defendants, that is the only one that could possibly be at issue, but Defendants refuse to acknowledge this.

v. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

vi. SPAVI's Supporting Evidence: Each of the agreements included in the trial exhibits and testimony of Mr. Gregorio, Mr. Tan, Ms. Victor, as well as Mr. Koren – all of which will establish that they were not aware of and had no intent to cause anyone to breach any contract. Also, the correspondence leading up to the termination of the license – Trial Exhibits 20-31 – also confirm the intent was to

1 negotiate a license with PCJV, something for which years
2 were spent in pursuit, to no avail.

3 e. Element No. 4: SPAVI's conduct caused any one of the Cinco
4 parties to breach the contract

5 i. Disputed Status of Element 4: The parties dispute this
6 element is satisfied.

7 ii. Nature of Dispute: factual and legal.

8 iii. PCJV USA Parties' Supporting Legal Position: The term for
9 PCJV USA, LLC's use of the U.S. Potato Corner trademarks
10 "can be [i]mplied from the nature of the contract and
11 circumstances surrounding it." *See Consolidated Theatres,*
12 *Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d
13 713, 725 (1968). The "initial effort of the court, in
14 construing contracts of continuing performance of
15 forbearance which contain no express term of duration,
16 must always be that of implying a term of duration
17 commensurate with the intentions of the parties" *Id.* at
18 727. Only when "the nature of the contract and the totality
19 of the surrounding circumstances give no suggestion as to
20 any ascertainable term . . . , the obligations under the contract
21 shall be terminable at will by any party upon reasonable
22 notice after such a reasonable time has elapsed." *Id.* Further,
23 it is immaterial that SPAVI had full knowledge of the
24 contracts' terms. *See Jenni Rivera Enterprises, LLC v. Latin*
25 *World Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766,
26 783 (2019). Nor is SPAVI's belief about the legal
27 significance of facts or belief that the parties' agreements are
28

1 legally binding or has a different legal effect from what it is
2 judicially held to have. *See Little v. Amber Hotel Co.*, 202
3 Cal. App. 4th 280, 302 (2011).

4 iv. Plaintiff's Position Statement: First, this presumes Cinco
5 breached a contract. The only contracts that have been
6 identified as being "breached" are the unsigned licensee
7 agreement and the AJVA. Neither document binds Cinco –
8 indeed, that the AJVA constitutes an agreement to agree and
9 not a contract has already been adjudicated and decided as
10 law of the case. It is impossible to know what the specific
11 contract is at issue here. To the extent any actual contract
12 ever existed between Cinco and these parties, the only one
13 that is possible is the Settlement Agreement and
14 corresponding agreement selling PCJV equity to GKK
15 Capital. (Trial Exhibit 1176.) Because Cinco has never been
16 a party to any other contract with any of the Counterclaim
17 Defendants, that is the only one that could possibly be at
18 issue, but Defendants refuse to acknowledge this.

19 v. PCJV USA Parties' Supporting Evidence: the following
20 categories, which are defined above, capture the key phases
21 and supporting evidence: Superseding Joint Venture (2008–
22 2010), Alternative Licensing Arrangements and Ongoing
23 Ratification (2011–2012), Formalization and Modification of
24 the Joint Venture (2012), LA Group Partnership Agreement
25 and Evolving Business Dynamics and Terms (2013–2018),
26 Dispute, Litigation, and State Court Proceedings (2018 and
27 Beyond), Ongoing Annual Ratification and Regulatory
28

Compliance, and SPAVI Parties' Tortious Conduct.

vi. SPAVI Parties' Supporting Evidence: The absence of evidence that Cinco was a party to, or breached, any contract with any of the Counterclaimants is the supporting evidence.

f. Element No. 5: any one of the PCJV USA Parties were harmed

i. Disputed Status of Element 4: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal.

iii. PCJV USA Parties' Position Statement: Plaintiff's position statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here.

iv. Plaintiff's Position Statement: First, this presumes Cinco breached a contract. The only contracts that have been identified as being "breached" are the unsigned licensee agreement and the AJVA. Neither document binds Cinco – indeed, that the AJVA constitutes an agreement to agree and not a contract has already been adjudicated and decided as law of the case. It is impossible to know what the specific contract is at issue here. To the extent any actual contract ever existed between Cinco and these parties, the only one that is possible is the Settlement Agreement and corresponding agreement selling PCJV equity to GKK Capital. (Trial Exhibit 1176.) Because Cinco has never been a party to any other contract with any of the Counterclaim

Defendants, that is the only one that could possibly be at issue, but Defendants refuse to acknowledge this.

v. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

vi. SPAVI Parties' Supporting Evidence: The absence of evidence that Cinco was a party to, or breached, any contract with any of the Counterclaimants is the supporting evidence, as there is no way any of the Counterclaimants could have been harmed.

g. Element No. 6: SPAVI's conduct was a substantial factor in causing harm to any of the Counterclaimants.

i. Disputed Status of Element 6: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal.

iii. PCJV USA Parties' Position Statement: Plaintiff's position statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here

iv. Plaintiff's Position Statement: Again, this presumes Cinco breached a contract. The only contracts that have been identified as being "breached" are the unsigned licensee agreement and the AJVA. Neither document binds Cinco – indeed, that the AJVA constitutes an agreement to agree and not a contract has already been adjudicated and decided as law of the case. It is impossible to know what the specific

1 contract is at issue here. To the extent any actual contract
2 ever existed between Cinco and these parties, the only one
3 that is possible is the Settlement Agreement and
4 corresponding agreement selling PCJV equity to GKK
5 Capital. (Trial Exhibit 1176.) Because Cinco has never been
6 a party to any other contract with any of the Counterclaim
7 Defendants, that is the only one that could possibly be at
8 issue, but Defendants refuse to acknowledge this.

9 v. PCJV USA Parties' Supporting Evidence: the following
10 categories, which are defined above, capture the key phases
11 and supporting evidence: Superseding Joint Venture (2008–
12 2010), Alternative Licensing Arrangements and Ongoing
13 Ratification (2011–2012), Formalization and Modification of
14 the Joint Venture (2012), LA Group Partnership Agreement
15 and Evolving Business Dynamics and Terms (2013–2018),
16 Dispute, Litigation, and State Court Proceedings (2018 and
17 Beyond), Ongoing Annual Ratification and Regulatory
18 Compliance, and SPAVI Parties' Tortious Conduct.

19 vi. SPAVI and Cinco's Supporting Evidence: SPAVI's only act
20 that could have caused "harm" to any of the
21 Counterclaimants is termination of the license, which it was
22 permitted to do. The absence of evidence that Cinco was a
23 party to, or breached, any contract with any of the
24 Counterclaimants is the supporting evidence, as there is no
25 way any of the Counterclaimants could have been harmed
26 let alone as a result of any act by SPAVI.

27 **2) Cause of Action No. 3: Intentional Interference with Contractual**
28

Relations.

- a. Element No. 1: there were various contracts, including contracts with the Cinco parties, franchisees, suppliers, and vendors,
- i. Disputed Status of Element 1: The parties dispute that this element is satisfied.
 - ii. Nature of Dispute: Legal and factual
 - iii. PCJV USA Parties' Legal Position: The term for PCJV USA, LLC's use of the U.S. Potato Corner trademarks "can be [i]mplied from the nature of the contract and circumstances surrounding it." *See Consolidated Theatres, Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713, 725 (1968). The "initial effort of the court, in construing contracts of continuing performance of forbearance which contain no express term of duration, must always be that of implying a term of duration commensurate with the intentions of the parties" *Id.* at 727. Only when "the nature of the contract and the totality of the surrounding circumstances give no suggestion as to any ascertainable term . . . , the obligations under the contract shall be terminable at will by any party upon reasonable notice after such a reasonable time has elapsed." *Id.* Further, it is immaterial that SPAVI had full knowledge of the contracts' terms. *See Jenni Rivera Enterprises, LLC v. Latin World Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766, 783 (2019). Nor is SPAVI's belief about the legal significance of facts or belief that the parties' agreements are legally binding or has a different legal effect from what it is judicially held to have. *See Little v. Amber Hotel Co.*, 202 Cal. App. 4th 280,

302 (2011).

vii. Plaintiff's Supporting Legal Position: The only contracts that have been identified as being "breached" are the unsigned licensee agreement and the AJVA. Neither document binds Cinco – indeed, that the AJVA constitutes an agreement to agree and not a contract has already been adjudicated and decided as law of the case. It is impossible to know what the specific contract is at issue here. To the extent any actual contract ever existed between Cinco and these parties, the only one that is possible is the Settlement Agreement and corresponding agreement selling PCJV equity to GKK Capital. (Trial Exhibit 1176.) Because Cinco has never been a party to any other contract with any of the Counterclaim Defendants, that is the only one that could possibly be at issue, but Defendants refuse to acknowledge this.

iv. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), and Ongoing Annual Ratification and Regulatory Compliance.

v. SPAVI and Cinco's Supporting Evidence: the absence of evidence is enough. There are no such contracts

1 b. Element No. 2: SPAVI knew of the contracts.

2 i. Disputed Status of Element 2: The parties dispute that this
3 element is satisfied.

4 i. Nature of Dispute: Factual.

5 ii. PCJV USA Parties' Supporting Evidence: the following
6 category, which is defined above, captures the key phase and
7 supporting evidence: SPAVI Parties' Tortious Conduct.

8 iii. Plaintiff's Supporting Evidence: the absence of evidence is
9 enough. There are no such contracts.

10 c. Element No. 3: SPAVI's conduct prevented performance or made
11 performance more expensive or difficult.

12 i. Disputed Status of Element 3: The parties dispute that this
13 element is satisfied.

14 ii. Nature of Dispute: Factual.

15 iii. PCJV USA Parties' Supporting Evidence: PCJV USA Parties'
16 Supporting Evidence: the following categories, which are
17 defined above, capture the key phases and supporting
18 evidence: Superseding Joint Venture (2008–2010), Alternative
19 Licensing Arrangements and Ongoing Ratification (2011–
20 2012), Formalization and Modification of the Joint Venture
21 (2012), LA Group Partnership Agreement and Evolving
22 Business Dynamics and Terms (2013–2018), Dispute,
23 Litigation, and State Court Proceedings (2018 and Beyond),
24 Ongoing Annual Ratification and Regulatory Compliance, and
25 SPAVI Parties' Tortious Conduct.

26 iv. SPAVI and Cinco's Supporting Evidence: the absence of
27 evidence is enough. There are no such contracts
28

1 d. Element No. 4: SPAVI either (a) intended to disrupt the performance
2 of these contracts or (b) knew that disruption of performance was
3 certain or substantially certain to occur.

4 i. Disputed Status of Element 4: The parties dispute that this
5 element is satisfied.

6 ii. Nature of Dispute: Factual.

7 iii. PCJV USA Parties' Supporting Evidence: the following
8 category, which is defined above, captures the key phase and
9 supporting evidence: SPAVI Parties' Tortious Conduct.

10 iv. SPAVI and Cinco's Supporting Evidence: the absence of
11 evidence is enough. There are no such contracts

12 e. Element No. 5: any one of the PCJV USA Parties were harmed.

13 i. Disputed Status of Element 5: The parties dispute that this
14 element is satisfied.

15 ii. Nature of Dispute: Factual.

16 iii. PCJV USA Parties' Supporting Evidence: the following
17 category, which is defined above, captures the key phase and
18 supporting evidence: SPAVI Parties' Tortious Conduct.

19 iv. SPAVI Parties' Supporting Evidence: the absence of evidence
20 is enough. There are no such contracts.

21 f. Element No. 6: SPAVI's conduct was a substantial factor in causing
22 any one of the PCJV USA Parties' harm.

23 i. Disputed Status of Element 6: The parties dispute that this
24 element is satisfied.

25 ii. Nature of Dispute: Factual.

26 iii. PCJV USA Parties' Supporting Evidence: the following
27 category, which is defined above, captures the key phase and
28

supporting evidence: SPAVI Parties' Tortious Conduct.

- iv. SPAVI Parties' Supporting Evidence: the absence of evidence is enough. There are no such contracts

3) Cause of Action No. 4: Interference with Prospective Economic Relations.

- a. Element No. 1: any one of the PCJV USA Parties were in various economic relations, including with Cinco parties, franchisees, suppliers, and venders were in that probably would have resulted in an economic benefit to Defendants.

- i. Disputed Status of Element 1: The parties dispute that this element is satisfied.

- ii. Nature of Dispute: Legal and factual.

- iii. PCJV USA Parties' Supporting Legal Position: The term for PCJV USA, LLC's use of the U.S. Potato Corner trademarks "can be [i]mplied from the nature of the contract and circumstances surrounding it." *See Consolidated Theatres, Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713, 725 (1968). The "initial effort of the court, in construing contracts of continuing performance of forbearance which contain no express term of duration, must always be that of implying a term of duration commensurate with the intentions of the parties" *Id.* at 727. Only when "the nature of the contract and the totality of the surrounding circumstances give no suggestion as to any ascertainable term . . . , the obligations under the contract shall be terminable at will by any party upon reasonable notice after such a reasonable time has elapsed." *Id.* Further, it is immaterial that SPAVI had full

1 knowledge of the contracts' terms. *See Jenni Rivera*
2 *Enterprises, LLC v. Latin World Entertainment Holdings, Inc.*,
3 36 Cal. App. 5th 766, 783 (2019). Nor is SPAVI's belief about
4 the legal significance of facts or belief that the parties'
5 agreements are legally binding or has a different legal effect
6 from what it is judicially held to have. *See Little v. Amber*
7 *Hotel Co.*, 202 Cal. App. 4th 280, 302 (2011).

8 iv. Plaintiff's Supporting Legal Position: the only relationships
9 SPAVI knew about were with franchisees and certain vendors.
10 the specific relationships at issue here have never been
11 disclosed.

12 v. PCJV USA Parties' Supporting Evidence: the following
13 categories, which are defined above, capture the key phases
14 and supporting evidence: Superseding Joint Venture (2008–
15 2010), Alternative Licensing Arrangements and Ongoing
16 Ratification (2011–2012), Formalization and Modification of
17 the Joint Venture (2012), LA Group Partnership Agreement
18 and Evolving Business Dynamics and Terms (2013–2018),
19 Dispute, Litigation, and State Court Proceedings (2018 and
20 Beyond), and Ongoing Annual Ratification and Regulatory
21 Compliance.

22 vi. SPAVI's Supporting Evidence: testimony of executives.

23 b. Element No. 2: SPAVI knew of the relationships.

24 i. Disputed Status of Element 2: The parties dispute that this
25 element is satisfied.

26 ii. Nature of Dispute: Factual.

27 iii. PCJV USA Parties' Supporting Evidence: the following
28

- 1 category, which is defined above, captures the key phase and
2 supporting evidence: SPAVI Parties' Tortious Conduct.
- 3 iv. SPAVI's Supporting Evidence: testimony of executives
- 4 c. Element No. 3: SPAVI engaged in conduct to destroy the value of any
5 one of the PCJV USA Parties' relationships by usurping the benefits of
6 those relationships for SPAVI's benefit.
- 7 i. Disputed Status of Element 3: The parties dispute that this
8 element is satisfied.
- 9 ii. Nature of Dispute: Factual.
- 10 iii. PCJV USA Parties' Supporting Evidence: the following
11 category, which is defined above, captures the key phase and
12 supporting evidence: SPAVI Parties' Tortious Conduct.
- 13 iv. SPAVI's Supporting Evidence: Testimony of Tan and
14 Concepcion and Victor and Shaikh and Hussein will all
15 support SPAVI here.
- 16 d. Element No. 4: by engaging in this conduct, SPAVI either (a) intended
17 to disrupt the relationships or (b) knew that disruption of the
18 relationships was certain or substantially certain to occur.
- 19 i. Disputed Status of Element 4: The parties dispute that this
20 element is satisfied.
- 21 ii. Nature of Dispute: Factual.
- 22 iii. PCJV USA Parties' Supporting Evidence: the following
23 category, which is defined above, captures the key phase and
24 supporting evidence: SPAVI Parties' Tortious Conduct.
- 25 iv. SPAVI's Supporting Evidence: Tan and Concepcion and
26 Victor and Shaikh and Hussein will all support SPAVI here.
- 27 e. Element No. 5: those relationships were disrupted.
- 28

- i. Disputed Status of Element 5: The parties dispute that this element is satisfied.
 - ii. Nature of Dispute: Factual.
 - iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.
 - iv. SPAVI Parties' Supporting Evidence: it is unknown what relationships were disrupted.
- f. Element No. 6: any one of the PCJV USA Parties were harmed.
- i. Disputed Status of Element 6: The parties dispute that this element is satisfied.
 - ii. Nature of Dispute: Factual.
 - iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.
 - iv. SPAVI Parties' Supporting Evidence: no proof of this has ever been established, particularly harm caused by any of the responding parties.
- g. Element No. 7: SPAVI's conduct was a substantial factor in causing any one of the PCJV USA Parties' harm.

- i. Disputed Status of Element 7: The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual.
- iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.
- iv. SPAVI Parties' Supporting Evidence: no proof of this has ever been established, particularly harm caused by any of the responding parties.

4) Cause of Action No. 5: Negligent Interference with Prospective Economic Advantage.

- a. Element No. 1: any one of the PCJV USA Parties were in various economic relations, including with Cinco parties, franchisees, suppliers, and venders that probably would have resulted in a future economic benefit to any one of the PCJV USA Parties.
 - i. Disputed Status of Element 1: The parties dispute that this element is satisfied.
 - ii. Nature of Dispute: Legal and factual.
 - iii. PCJV USA Parties' Supporting Legal Position: The term for PCJV USA, LLC's use of the U.S. Potato Corner trademarks "can be [i]mplied from the nature of the contract and circumstances surrounding it." *See Consolidated Theatres, Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713, 725 (1968). The "initial effort of the court, in construing contracts of continuing performance of forbearance which contain no express term of duration, must always be that of implying a term of duration commensurate with the intentions

1 of the parties” *Id.* at 727. Only when “the nature of the
2 contract and the totality of the surrounding circumstances give
3 no suggestion as to any ascertainable term . . . , the obligations
4 under the contract shall be terminable at will by any party
5 upon reasonable notice after such a reasonable time has
6 elapsed.” *Id.* Further, it is immaterial that SPAVI had full
7 knowledge of the contracts’ terms. *See Jenni Rivera*
8 *Enterprises, LLC v. Latin World Entertainment Holdings, Inc.*,
9 36 Cal. App. 5th 766, 783 (2019). Nor is SPAVI’s belief about
10 the legal significance of facts or belief that the parties’
11 agreements are legally binding or has a different legal effect
12 from what it is judicially held to have. *See Little v. Amber*
13 *Hotel Co.*, 202 Cal. App. 4th 280, 302 (2011).

14 vii. Plaintiff’s Supporting Legal Position: the only relationships
15 SPAVI knew about were with franchisees and certain vendors.
16 the specific relationships at issue here have never been
17 disclosed.

18 iv. PCJV USA Parties’ Supporting Evidence: documents and
19 testimony including and related to prospective supplier
20 economic relationships and franchisee relations. the following
21 categories, which are defined above, capture the key phases
22 and supporting evidence: Superseding Joint Venture (2008–
23 2010), Alternative Licensing Arrangements and Ongoing
24 Ratification (2011–2012), Formalization and Modification of
25 the Joint Venture (2012), LA Group Partnership Agreement
26 and Evolving Business Dynamics and Terms (2013–2018),
27 Dispute, Litigation, and State Court Proceedings (2018 and
28

Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.

v. SPAVI's Supporting Evidence: testimony of executives.

b. Element No. 2: SPAVI knew or should have known of these relationships.

i. Disputed Status of Element 2: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI Parties' Supporting Evidence: testimony of executives

c. Element No. 3: SPAVI knew or should have known that these relationships would be disrupted if it failed to act with reasonable care.

i. Disputed Status of Element 3: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.

iv. SPAVI's Supporting Evidence: Testimony of Tan and Concepcion and Victor and Shaikh and Hussein will all support SPAVI here

d. Element No. 4: SPAVI failed to act with reasonable care.

i. Disputed Status of Element 4: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

- 1 iii. PCJV USA Parties’ Supporting Evidence: the following
2 category, which is defined above, captures the key phase and
3 supporting evidence: SPAVI Parties’ Tortious Conduct.
4 iv. SPAVI’s Supporting Evidence: Tan and Concepcion and
5 Victor and Shaikh and Hussein will all support SPAVI here
6 e. Element No. 5: SPAVI engaged in wrongful conduct through engaging
7 in conduct to destroy the value of any one of the PCJV USA Parties’
8 relationships by usurping the benefits of those relationships for
9 SPAVI’s benefit.
10 i. Disputed Status of Element 5: The parties dispute that this
11 element is satisfied.
12 ii. Nature of Dispute: Factual.
13 iii. PCJV USA Parties’ Supporting Evidence: the following
14 categories, which are defined above, capture the key phases
15 and supporting evidence: Superseding Joint Venture (2008–
16 2010), Alternative Licensing Arrangements and Ongoing
17 Ratification (2011–2012), Formalization and Modification of
18 the Joint Venture (2012), LA Group Partnership Agreement
19 and Evolving Business Dynamics and Terms (2013–2018),
20 Dispute, Litigation, and State Court Proceedings (2018 and
21 Beyond), Ongoing Annual Ratification and Regulatory
22 Compliance, and SPAVI Parties’ Tortious Conduct.
23 iv. SPAVI Parties’ Supporting Evidence: Tan and Concepcion
24 and Victor and Shaikh and Hussein will all support SPAVI
25 here
26 f. Element No. 6: the relationships were disrupted.
27 i. Disputed Status of Element 6: The parties dispute that this
28

1 element is satisfied.

2 ii. Nature of Dispute: Factual.

3 iii. PCJV USA Parties' Supporting Evidence: the following
4 category, which is defined above, captures the key phase and
5 supporting evidence: SPAVI Parties' Tortious Conduct.

6 iv. SPAVI Parties' Supporting Evidence: SPAVI is unaware of
7 what relationships were harmed.

8 g. Element No. 7: any one of the PCJV USA Parties were harmed.

9 i. Disputed Status of Element 7: The parties dispute that this
10 element is satisfied.

11 ii. Nature of Dispute: Factual.

12 iii. PCJV USA Parties' Supporting Evidence: the following
13 category, which is defined above, captures the key phase and
14 supporting evidence: SPAVI Parties' Tortious Conduct.

15 i. SPAVI Parties' Supporting Evidence: no proof of this has ever
16 been established, particularly harm caused by any of the
17 responding parties

18 h. Element No. 8: SPAVI's wrongful conduct was a substantial factor in
19 causing Defendants' harm.

20 i. Disputed Status of Element 8: The parties dispute that this
21 element is satisfied.

22 ii. Nature of Dispute: Factual.

23 iii. PCJV USA Parties' Supporting Evidence: the following
24 category, which is defined above, captures the key phase and
25 supporting evidence: SPAVI Parties' Tortious Conduct.

26 iv. SPAVI's Supporting Evidence: no proof of this has ever been
27 established, particularly harm caused by any of the responding
28

parties.

5) Cause of Action No. 6: Aiding and Abetting Torts.

a. Element No. 1: SPAVI knew that a breach of a fiduciary duty, breach of the implied covenant of good faith and fair dealing, fraud, or conversion was going to be committed by Cinco Corporation, its affiliates, or its agents against any one of the PCJV USA Parties.

i. Disputed Status of Element 1: The parties dispute that this element is satisfied.

ii. Nature of Dispute: Factual.

iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct

iv. SPAVI's Supporting Evidence: no torts have occurred so nothing could be aided or abetted.

b. Element No. 2: SPAVI gave substantial assistance or encouragement to Cinco Corporation, its affiliates, or its agents.

v. Disputed Status of Element 2: The parties dispute that this element is satisfied.

vi. Nature of Dispute: Factual.

vii. PCJV USA Parties' Supporting Evidence: the following

- category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.
- viii. SPAVI's Supporting Evidence: no torts have occurred so nothing could be aided or abetted.
- c. Element No. 3: Cinco Corporation's, its affiliates, or its agents' conduct was a substantial factor in causing harm to any one of the PCJV USA Parties.
- ix. Disputed Status of Element 3: The parties dispute that this element is satisfied.
- x. Nature of Dispute: Factual.
- xi. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.
- xii. SPAVI's Supporting Evidence: no torts have occurred so nothing could be aided or abetted.

6) Cause of Action No. 7: First Count of Breach of Fiduciary Duty.

- a. Element No. 1: either Cinco Corporation or SPAVI, as Cinco Corporation's successor-in-interest, was a joint venture partner of PCJV.
- i. Disputed Status of Element 1: The parties dispute that this element is satisfied.
- ii. Nature of Dispute: Factual.
- iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of

1 the Joint Venture (2012), LA Group Partnership Agreement
2 and Evolving Business Dynamics and Terms (2013–2018),
3 Dispute, Litigation, and State Court Proceedings (2018 and
4 Beyond), and Ongoing Annual Ratification and Regulatory
5 Compliance.

6 iv. SPAVI and Cinco’s Supporting Evidence: the absence of
7 evidence will suffice. Also, no evidence that SPAVI is a
8 successor in interest or took on this liability

9 b. Element No. 2: Cinco Corporation or SPAVI, as Cinco Corporation’s
10 successor-in-interest, acted on PCJV’s behalf for purposes of
11 providing PCJV with an exclusive right to use the Potato Corner
12 trademark in the United States.

13 i. Disputed Status of Element 2: The parties dispute that this
14 element is satisfied.

15 ii. Nature of Dispute: Factual

16 iii. PCJV USA Parties’ Supporting Evidence: the following
17 categories, which are defined above, capture the key phases
18 and supporting evidence: Superseding Joint Venture (2008–
19 2010), Alternative Licensing Arrangements and Ongoing
20 Ratification (2011–2012), Formalization and Modification of
21 the Joint Venture (2012), LA Group Partnership Agreement
22 and Evolving Business Dynamics and Terms (2013–2018),
23 Dispute, Litigation, and State Court Proceedings (2018 and
24 Beyond), Ongoing Annual Ratification and Regulatory
25 Compliance, and SPAVI Parties’ Tortious Conduct

26 iv. SPAVI and Cinco’s Supporting Evidence: the absence of
27 evidence will suffice. Also, no evidence that SPAVI is a
28

1 successor in interest or took on this liability

2 c. Element No. 3: Cinco Corporation or SPAVI, as Cinco Corporation's
3 successor-in-interest, failed to act as a reasonably careful partner
4 would have acted under the same or similar circumstances.

5 i. Disputed Status of Element 3: The parties dispute that this
6 element is satisfied.

7 ii. Nature of Dispute: Factual

8 iii. PCJV USA Parties' Supporting Evidence: the following
9 categories, which are defined above, capture the key phases
10 and supporting evidence: Superseding Joint Venture (2008–
11 2010), Alternative Licensing Arrangements and Ongoing
12 Ratification (2011–2012), Formalization and Modification of
13 the Joint Venture (2012), LA Group Partnership Agreement
14 and Evolving Business Dynamics and Terms (2013–2018),
15 Dispute, Litigation, and State Court Proceedings (2018 and
16 Beyond), Ongoing Annual Ratification and Regulatory
17 Compliance, and SPAVI Parties' Tortious Conduct
18 iv. SPAVI and Cinco's Supporting Evidence: the absence of
19 evidence of a duty will suffice. Also, no evidence that SPAVI
20 is a successor in interest or took on this liability

21 d. Element No. 4: any one of the PCJV USA Parties were harmed.

22 i. Disputed Status of Element 4: The parties dispute that this
23 element is satisfied.

24 ii. Nature of Dispute: factual

25 iii. PCJV USA Parties' Supporting Evidence: the following
26 category, which is defined above, captures the key phase and
27 supporting evidence: SPAVI Parties' Tortious Conduct.
28

- 1 iv. SPAVI and Cinco's Supporting Evidence: the absence of
2 evidence of a duty will suffice. Also, no evidence that SPAVI
3 is a successor in interest or took on this liability
- 4 e. Element No. 5: the conduct of Cinco Corporation or SPAVI, as Cinco
5 Corporation's successor-in-interest, was a substantial factor in causing
6 any one of the PCJV USA Parties' harm.
- 7 i. Disputed Status of Element 5: The parties dispute that this
8 element is satisfied.
- 9 ii. Nature of Dispute: factual
- 10 iii. PCJV USA Parties' Supporting Evidence: the following
11 category, which is defined above, captures the key phase and
12 supporting evidence: SPAVI Parties' Tortious Conduct
- 13 iv. SPAVI and Cinco's Supporting Evidence: the absence of
14 evidence of a duty will suffice. Also, no evidence that SPAVI
15 is a successor in interest or took on this liability

16 **7) Cause of Action No. 7: Second Count of Breach of Fiduciary Duty.**

- 17 a. Element No. 1: Cinco Corporation or SPAVI, as Cinco Corporation's
18 successor-in-interest, was a joint venture partner of PCJV.
- 19 i. Disputed Status of Element 1: The parties dispute that this
20 element is satisfied.
- 21 ii. Nature of Dispute: factual
- 22 iii. PCJV USA Parties' Supporting Evidence: the following
23 categories, which are defined above, capture the key phases
24 and supporting evidence: Superseding Joint Venture (2008–
25 2010), Alternative Licensing Arrangements and Ongoing
26 Ratification (2011–2012), Formalization and Modification of
27 the Joint Venture (2012), LA Group Partnership Agreement
28

1 and Evolving Business Dynamics and Terms (2013–2018),
2 Dispute, Litigation, and State Court Proceedings (2018 and
3 Beyond), and Ongoing Annual Ratification and Regulatory
4 Compliance.

5 iv. SPAVI and Cinco’s Supporting Evidence: the absence of
6 evidence of a duty will suffice. Also, no evidence that SPAVI
7 is a successor in interest or took on this liability

8 b. Element No. 2: Cinco Corporation or SPAVI, as Cinco Corporation’s
9 successor-in-interest, knowingly acted against interests of PCJV and
10 PCJV’s other joint venture partners in connection with providing
11 PCJV with an exclusive right to use the Potato Corner trademark in the
12 United States.

13 i. Disputed Status of Element 2: The parties dispute that this
14 element is satisfied.

15 ii. Nature of Dispute: Factual

16 iii. PCJV USA Parties’ Supporting Evidence: the following
17 categories, which are defined above, capture the key phases
18 and supporting evidence: Superseding Joint Venture (2008–
19 2010), Alternative Licensing Arrangements and Ongoing
20 Ratification (2011–2012), Formalization and Modification of
21 the Joint Venture (2012), LA Group Partnership Agreement
22 and Evolving Business Dynamics and Terms (2013–2018),
23 Dispute, Litigation, and State Court Proceedings (2018 and
24 Beyond), Ongoing Annual Ratification and Regulatory
25 Compliance, and SPAVI Parties’ Tortious Conduct

26 iv. SPAVI and Cinco’s Supporting Evidence: the absence of
27 evidence of a duty will suffice. Also, no evidence that SPAVI
28

1 is a successor in interest or took on this liability

2 c. Element No. 3: any one of the PCJV USA Parties did not give
3 informed consent to the conduct of Cinco Corporation or SPAVI, as
4 Cinco Corporation's successor-in-interest.

5 i. Disputed Status of Element 3: The parties dispute that this
6 element is satisfied.

7 ii. Nature of Dispute: Factual

8 iii. PCJV USA Parties' Supporting Evidence: the following
9 categories, which are defined above, capture the key phases
10 and supporting evidence: Superseding Joint Venture (2008–
11 2010), Alternative Licensing Arrangements and Ongoing
12 Ratification (2011–2012), Formalization and Modification of
13 the Joint Venture (2012), LA Group Partnership Agreement
14 and Evolving Business Dynamics and Terms (2013–2018),
15 Dispute, Litigation, and State Court Proceedings (2018 and
16 Beyond), Ongoing Annual Ratification and Regulatory
17 Compliance, and SPAVI Parties' Tortious Conduct.

18 iv. SPAVI and Cinco's Supporting Evidence: the absence of
19 evidence of a duty will suffice. Also, no evidence that SPAVI
20 is a successor in interest or took on this liability

21 d. Element No. 4: any one of the PCJV USA Parties were harmed,

22 i. Disputed Status of Element 4: The parties dispute that this
23 element is satisfied.

24 ii. Nature of Dispute: Factual.

25 iii. PCJV USA Parties' Supporting Evidence: the following
26 category, which is defined above, captures the key phase and
27 supporting evidence: SPAVI Parties' Tortious Conduct.
28

- 1 iv. SPAVI and Cinco's Supporting Evidence: the absence of
2 evidence of a duty will suffice. Also, no evidence that SPAVI
3 is a successor in interest or took on this liability
- 4 e. Element No. 5: the conduct of Cinco Corporation or SPAVI, as Cinco
5 Corporation's successor-in-interest, was a substantial factor in causing
6 any one of the PCJV USA Parties' harm.
- 7 i. Disputed Status of Element 5: The parties dispute that this
8 element is satisfied.
- 9 ii. Nature of Dispute: factual
- 10 iii. PCJV USA Parties' Supporting Evidence: the following
11 category, which is defined above, captures the key phase and
12 supporting evidence: SPAVI Parties' Tortious Conduct
- 13 iv. SPAVI and Cinco's Supporting Evidence: the absence of
14 evidence of a duty will suffice. Also, no evidence that SPAVI
15 is a successor in interest or took on this liability

16 **8) Cause of Action No. 8: Breach of Contract.**

- 17 a. Element No. 1: there is a contract between PCJV and Cinco
18 Corporation or SPAVI, as Cinco Corporation's successor-in-interest.
- 19 i. Disputed Status of Element 1: The parties dispute this
20 element is satisfied.
- 21 ii. Nature of Dispute: factual and legal
- 22 iii. PCJV USA Parties' Position Statement: The term for PCJV
23 USA, LLC's use of the U.S. Potato Corner trademarks "can
24 be [i]mplied from the nature of the contract and
25 circumstances surrounding it." *See Consolidated Theatres,*
26 *Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d
27 713, 725 (1968). The "initial effort of the court, in construing
28

1 contracts of continuing performance of forbearance which
2 contain no express term of duration, must always be that of
3 implying a term of duration commensurate with the
4 intentions of the parties” *Id.* at 727. Only when “the
5 nature of the contract and the totality of the surrounding
6 circumstances give no suggestion as to any ascertainable
7 term . . . , the obligations under the contract shall be
8 terminable at will by any party upon reasonable notice after
9 such a reasonable time has elapsed.” *Id.* Further, it is
10 immaterial that SPAVI had full knowledge of the contracts’
11 terms. *See Jenni Rivera Enterprises, LLC v. Latin World*
12 *Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766, 783
13 (2019). Nor is SPAVI’s belief about the legal significance of
14 facts or belief that the parties’ agreements are legally binding
15 or has a different legal effect from what it is judicially held to
16 have. *See Little v. Amber Hotel Co.*, 202 Cal. App. 4th 280,
17 302 (2011)

18 iv. Plaintiff’s Position Statement: as drafted it is impossible to
19 know what the specific contract is that is at issue here. It has
20 never been disclosed, and still undisclosed. Rather than
21 jettison the claim or actually identify the contract, instead,
22 Defendants’ solution is to fudge with obtuse language in the
23 jury instructions, designed to confuse everyone, including the
24 jury: “there was a contract between any one of the PCJV
25 Plaintiffs and any one of the Cinco parties.” Indeed, the only
26 contract that Cinco has been a party to with any of these
27 Counterclaimants is the Settlement Agreement of the Prior
28

1 Governance Action. There is no other written agreement
2 between PCJV and Cinco, or between any other
3 Counterclaimant and Cinco. It is possible that
4 Counterclaimants are seeking to allege that Cinco is an alter
5 ego of Potato Corner International or others, however,
6 PCJV and the other counterclaimants already alleged this --
7 alter ego status of Cinco -- and after a negotiated
8 settlement, dismissed this claim with prejudice. They may
9 not raise it now. *See, e.g., Torrey Pines Bank v. Superior Ct.*,
10 216 Cal. App. 3d 813, 820 (Ct. App. 1989) (holding that “a
11 dismissal with prejudice is the maiden name for a common
12 law retraxit,” and “[a] retraxit is equivalent to a judgment on
13 the merits and as such bars further litigation on the same
14 subject matter between the parties.”); *Datta v. Staab*, 173
15 Cal. App. 2d 613, 620—21 (1959) (“The effect of a dismissal
16 with prejudice is quite different, however, when it is
17 executed and filed in return for a consideration moving from
18 the defendant. Such a dismissal operates as a complete bar to
19 any future action and has the same legal effect as a common
20 law petraxit.”).

21 v. Defendants’ Supporting Evidence: the following categories,
22 which are defined above, capture the key phases and
23 supporting evidence: Superseding Joint Venture (2008–
24 2010), Alternative Licensing Arrangements and Ongoing
25 Ratification (2011–2012), Formalization and Modification of
26 the Joint Venture (2012), LA Group Partnership Agreement
27 and Evolving Business Dynamics and Terms (2013–2018),
28

1 Dispute, Litigation, and State Court Proceedings (2018 and
2 Beyond), and Ongoing Annual Ratification and Regulatory
3 Compliance.

4 vi. SPAVI Parties' Supporting Evidence: Each of the
5 agreements included in the trial exhibits and testimony of
6 Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which
7 will establish that none of the Counterclaimants – PCJV,
8 PCIT, LA Group LLC, GK Capital, NKM, or Koren have
9 any contract to which Cinco has privity; the settlement
10 agreement (Trial Exhibit 1172) and evidence of the
11 dismissals with prejudice, as well as the pleadings in the
12 prior case establishing what has been dismissed, and subject
13 to retraxit.

14 b. Element No. 2: PCJV USA Parties did all or substantially all of the
15 things required under the contract, or were excused from so
16 performing:

17 i. Disputed Status of Element 2: The parties dispute this
18 element is satisfied.

19 ii. Nature of Dispute: factual and legal.

20 iii. PCJV USA Parties' Position Statement: Plaintiff's position
21 statement does not address a legal issue concerning this
22 element. To the extent Plaintiff's position statement
23 addresses element 1, PCJV USA Parties incorporate their
24 respective response here

25 iv. Plaintiff's Position Statement: as drafted it is impossible to
26 know what the specific contract is at issue here. It has never
27 been disclosed, and still undisclosed. So, when this element
28

1 in the instructions says, “the contract,” whereas the prior
2 element refers to some unidentified contract, as a matter of
3 law, yes, this element is disputed. To the extent any actual
4 contract ever existed between Cinco and these parties, the
5 only one that is possible is the Settlement Agreement and
6 corresponding agreement selling PCJV equity to GKK
7 Capital. (Trial Exhibit 1176.) Because Cinco has never been
8 a party to any other contract with any of the Counterclaim
9 Defendants, that is the only one that could possibly be at
10 issue, but Defendants refuse to acknowledge this. It is
11 possible that Counterclaimants are seeking to allege that
12 Cinco is an alter ego of Potato Corner International or
13 others, however, PCJV and the other counterclaimants
14 already alleged this -- alter ego status of Cinco -- and after
15 a negotiated settlement, dismissed this claim with prejudice.
16 They may not raise it now. *See, e.g., Torrey Pines Bank v.*
17 *Superior Ct.*, 216 Cal. App. 3d 813, 820 (Ct. App. 1989)
18 (holding that “a dismissal with prejudice is the maiden name
19 fir a common law retraxit,” and “[a] retraxit is equivalent to a
20 judgment on the merits and as such bars further litigation on
21 the same subject matter between the parties.”); *Datta v.*
22 *Staab*, 173 Cal. App. 2d 613, 620—21 (1959) (“The effect of
23 a dismissal with prejudice is quite different, however, when
24 it is executed and filed in return for a consideration moving
25 from the defendant. Such a dismissal operates as a complete
26 bar to any future action and has the same legal effect as a
27 common law petraxit.”) (internal
28

1 v. PCJV USA Parties' Supporting Evidence: the following
2 categories, which are defined above, capture the key phases
3 and supporting evidence: Superseding Joint Venture (2008–
4 2010), Alternative Licensing Arrangements and Ongoing
5 Ratification (2011–2012), Formalization and Modification of
6 the Joint Venture (2012), LA Group Partnership Agreement
7 and Evolving Business Dynamics and Terms (2013–2018),
8 Dispute, Litigation, and State Court Proceedings (2018 and
9 Beyond), and Ongoing Annual Ratification and Regulatory
10 Compliance.

11 vi. SPAVI Parties' Supporting Evidence: Each of the
12 agreements included in the trial exhibits and testimony of
13 Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which
14 will establish that none of the Counterclaimants – PCJV,
15 PCIT, LA Group LLC, GK Capital, NKM, or Koren have
16 any contract to which Cinco has privity; the settlement
17 agreement (Trial Exhibit 1172) and evidence of the
18 dismissals with prejudice, as well as the pleadings in the
19 prior case establishing what has been dismissed, and subject
20 to retraxit..

21 c. Element No. 3: Cinco Corporation or SPAVI, as Cinco
22 Corporation's successor-in-interest, breached the contract

- 23 i. Disputed Status of Element 3: The parties dispute this
24 element is satisfied.
25 ii. Nature of Dispute: factual and legal.
26 iii. PCJV USA Parties' Position Statement: SPAVI intended to
27 cause the breach of the above listed contracts by: (1)
28

1 allegedly acquiring IP rights from Cinco (which SPAVI
2 claims include US IP rights), without LA
3 Group's/Koren's/PCJV's prior written consent in violation of
4 the JVA/AJVA/LLC Agreement; (2) failing to allegedly
5 acquire the associated obligations and burdens under those
6 agreements to, for example, acknowledge our use and
7 termination rights, make best efforts to cooperate for the
8 success of PCJV, to perform further acts (such as execute
9 and deliver all required documents), if necessary, to provide
10 us use rights, or to, at minimum, acknowledge that PCJV
11 maintains a 50-year license or at least may continue to use
12 for as long as necessary under the franchise agreements it
13 was authorized to sign with franchisees in violation of the
14 JVA/AJVA/LLC Agreement/license agreements/MSA (and
15 associated written, oral, implied-in-fact
16 agreements/modifications, such as meeting minutes, written
17 communications of the PCJV members/managers, FDDs);
18 (3) refusing to acknowledge PCJV's right to reverse engineer
19 the powders/spices in violation of the PCJV board meeting
20 minutes; (4) refusing to acknowledge PCJV's affiliated
21 Koren stores' right not to pay royalties in accordance with
22 the JVA/AJVA/LLC Agreement; (5) refusing to
23 acknowledge LA Group's and Cinco Group/PCI Group's
24 mutual waiver of royalties as to all other initial/franchise fees
25 or other royalty income actually collected or to be collected
26 by PCJV in accordance with the JVA/AJVA/LLC
27 Agreement/FDDs; (6) refusing to honor the settlement struck
28

1 with Cinco whereby Koren/GK acquired all interests and
2 attached interests (despite representing that it would); and (7)
3 causing certain PCJV franchisees to breach their franchise
4 agreements and associate themselves with SPAVI.

5 iv. Plaintiff's Position Statement: The only contracts that have
6 been identified as being "breached" are the unsigned licensee
7 agreement and the AJVA. Neither document binds Cinco –
8 indeed, that the AJVA constitutes an agreement to agree and
9 not a contract has already been adjudicated and decided as
10 law of the case. It is impossible to know what the specific
11 contract is at issue here. To the extent any actual contract
12 ever existed between Cinco and these parties, the only one
13 that is possible is the Settlement Agreement and
14 corresponding agreement selling PCJV equity to GKK
15 Capital. (Trial Exhibit 1176.) Because Cinco has never been
16 a party to any other contract with any of the Counterclaim
17 Defendants, that is the only one that could possibly be at
18 issue, but Defendants refuse to acknowledge this.

19 v. PCJV USA Parties' Supporting Evidence: the following
20 categories, which are defined above, capture the key phases
21 and supporting evidence: Superseding Joint Venture (2008–
22 2010), Alternative Licensing Arrangements and Ongoing
23 Ratification (2011–2012), Formalization and Modification of
24 the Joint Venture (2012), LA Group Partnership Agreement
25 and Evolving Business Dynamics and Terms (2013–2018),
26 Dispute, Litigation, and State Court Proceedings (2018 and
27 Beyond), Ongoing Annual Ratification and Regulatory
28

Compliance, and SPAVI Parties' Tortious Conduct.

vi. SPAVI Parties' Supporting Evidence: The absence of evidence that Cinco was a party to, or breached, any contract with any of the Counterclaimants is the supporting evidence.

d. Element No. 4: PCJV USA Parties were harmed.

i. Disputed Status of Element 4: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal.

iii. Defendants' Position Statement: Plaintiff's position statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here.

iv. Plaintiff's Position Statement: Cinco breached no contract. The only contracts that have been identified as being "breached" are the unsigned licensee agreement and the AJVA. Neither document binds Cinco – indeed, that the AJVA constitutes an agreement to agree and not a contract has already been adjudicated and decided as law of the case. It is impossible to know what the specific contract is at issue here. To the extent any actual contract ever existed between Cinco and these parties, the only one that is possible is the Settlement Agreement and corresponding agreement selling PCJV equity to GKK Capital. (Trial Exhibit 1176.) Because Cinco has never been a party to any other contract with any of the Counterclaim Defendants, that is the only one that

could possibly be at issue, but Defendants refuse to acknowledge this.

- v. Defendants’ Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties’ Tortious Conduct.
- vi. SPAVI Parties’ Supporting Evidence: The absence of evidence that Cinco was a party to, or breached, any contract with any of the Counterclaimants is the supporting evidence, as there is no way any of the Counterclaimants could have been harmed.

9) Cause of Action No. 9: Breach of Covenant of Good Faith and Fair Dealing.

- e. Element No. 1: there is a contract between a Counterclaimant and Cinco Corporation / that SPAVI is a successor in interest to a contract with Cinco.
 - i. Disputed Status of Element 1: The parties dispute this element is satisfied.
 - ii. Nature of Dispute: factual and legal
 - iii. PCJV USA Parties’ Position Statement: The term for PCJV USA, LLC’s use of the U.S. Potato Corner trademarks “can be [i]mplied from the nature of the contract and circumstances surrounding it.” *See Consolidated Theatres, Inc. v. Theatrical Stage Emp. Union, Local 16*, 69 Cal.2d 713, 725 (1968). The “initial effort of the court, in construing contracts of continuing performance of forbearance which contain no express term of duration, must always be that of implying a term of duration commensurate with the

1 intentions of the parties” *Id.* at 727. Only when “the
2 nature of the contract and the totality of the surrounding
3 circumstances give no suggestion as to any ascertainable
4 term . . . , the obligations under the contract shall be
5 terminable at will by any party upon reasonable notice after
6 such a reasonable time has elapsed.” *Id.* Further, it is
7 immaterial that SPAVI had full knowledge of the contracts’
8 terms. *See Jenni Rivera Enterprises, LLC v. Latin World*
9 *Entertainment Holdings, Inc.*, 36 Cal. App. 5th 766, 783
10 (2019). Nor is SPAVI’s belief about the legal significance of
11 facts or belief that the parties’ agreements are legally binding
12 or has a different legal effect from what it is judicially held to
13 have. *See Little v. Amber Hotel Co.*, 202 Cal. App. 4th 280,
14 302 (2011).

15 iv. Plaintiff’s Position Statement: Moreover, and again, as
16 drafted it is impossible to know what the specific contract is
17 that is at issue here. It has never been disclosed, and still
18 undisclosed. Rather than jettison the claim or actually
19 identify the contract, instead, Defendants’ solution is to
20 fudge with obtuse language in the jury instructions, designed
21 to confuse everyone, including the jury: “there was a contract
22 between any one of the PCJV Plaintiffs and any one of the
23 Cinco parties.” Indeed, the only contract that Cinco has been
24 a party to with any of these Counterclaimants is the
25 Settlement Agreement of the Prior Governance Action. There
26 is no other written agreement between PCJV and Cinco, or
27 between any other Counterclaimant and Cinco. It is possible
28

1 that Counterclaimants are seeking to allege that Cinco is an
2 alter ego of Potato Corner International or others, however,
3 PCJV and the other counterclaimants already alleged this --
4 alter ego status of Cinco -- and after a negotiated
5 settlement, dismissed this claim with prejudice. They may
6 not raise it now. *See, e.g., Torrey Pines Bank v. Superior Ct.*,
7 216 Cal. App. 3d 813, 820 (Ct. App. 1989) (holding that “a
8 dismissal with prejudice is the maiden name for a common
9 law retraxit,” and “[a] retraxit is equivalent to a judgment on
10 the merits and as such bars further litigation on the same
11 subject matter between the parties.”); *Datta v. Staab*, 173
12 Cal. App. 2d 613, 620—21 (1959) (“The effect of a dismissal
13 with prejudice is quite different, however, when it is
14 executed and filed in return for a consideration moving from
15 the defendant. Such a dismissal operates as a complete bar to
16 any future action and has the same legal effect as a common
17 law petraxit.”). Second, as for SPAVI, it purchased
18 intellectual property, and did not assume any contracts
19 binding Cinco. Thus, the claim that SPAVI is bound to good
20 faith and fair dealing as a “successor in interest has no basis”
21 and can be resolved a matter of law,, given that this simply
22 requires interpretation of contracts binding Cinco (of which
23 there are no one) to which SPAVI assumed (also, null set).
24 Put simply – SPAVI is not a successor in interest to any
25 contract of Cinco, and by purchasing the intellectual property
26 of Cinco, it was only bound to those contracts involving the
27 use and licensing of the brand – none of which are at issue in
28

1 this case.

2 v. PCJV USA Parties' Supporting Evidence: the following
3 categories, which are defined above, capture the key phases
4 and supporting evidence: Superseding Joint Venture (2008–
5 2010), Alternative Licensing Arrangements and Ongoing
6 Ratification (2011–2012), Formalization and Modification of
7 the Joint Venture (2012), LA Group Partnership Agreement
8 and Evolving Business Dynamics and Terms (2013–2018),
9 Dispute, Litigation, and State Court Proceedings (2018 and
10 Beyond), and Ongoing Annual Ratification and Regulatory
11 Compliance.

12 vi. SPAVI Parties' Supporting Evidence: Each of the
13 agreements included in the trial exhibits and testimony of
14 Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which
15 will establish that none of the Counterclaimants – PCJV,
16 PCIT, LA Group LLC, GK Capital, NKM, or Koren have
17 any contract to which Cinco has privity; the settlement
18 agreement (Trial Exhibit 1172) and evidence of the
19 dismissals with prejudice, as well as the pleadings in the
20 prior case establishing what has been dismissed, and subject
21 to retraxit.

22 f. Element No. 2: The Counterclaimant that is a party to the contract
23 did all or substantially all of the things required under the contract,
24 or were excused from so performing:

25 i. Disputed Status of Element 2: The parties dispute this
26 element is satisfied.

27 ii. Nature of Dispute: factual and legal.
28

- 1 iii. PCJV USA Parties' Position Statement: Plaintiff's position
2 statement does not address a legal issue concerning this
3 element. To the extent Plaintiff's position statement
4 addresses element 1, PCJV USA Parties incorporate their
5 respective response here.
- 6 iv. Plaintiff's Position Statement: as drafted it is impossible to
7 know what the specific contract is at issue here. It has never
8 been disclosed, and still undisclosed. So, when this element
9 in the instructions says, "the contract," whereas the prior
10 element refers to some unidentified contract, as a matter of
11 law, yes, this element is disputed. To the extent any actual
12 contract ever existed between Cinco and these parties, the
13 only one that is possible is the Settlement Agreement and
14 corresponding agreement selling PCJV equity to GKK
15 Capital. (Trial Exhibit 1176.) Because Cinco has never been
16 a party to any other contract with any of the Counterclaim
17 Defendants, that is the only one that could possibly be at
18 issue, but Defendants refuse to acknowledge this. It is
19 possible that Counterclaimants are seeking to allege that
20 Cinco is an alter ego of Potato Corner International or
21 others, however, PCJV and the other counterclaimants
22 already alleged this -- alter ego status of Cinco -- and after
23 a negotiated settlement, dismissed this claim with prejudice.
24 They may not raise it now. *See, e.g., Torrey Pines Bank v.*
25 *Superior Ct.*, 216 Cal. App. 3d 813, 820 (Ct. App. 1989)
26 (holding that "a dismissal with prejudice is the maiden name
27 for a common law retraxit," and "[a] retraxit is equivalent to
28

1 a judgment on the merits and as such bars further litigation
2 on the same subject matter between the parties.”); *Datta v.*
3 *Staab*, 173 Cal. App. 2d 613, 620—21 (1959) (“The effect of
4 a dismissal with prejudice is quite different, however, when
5 it is executed and filed in return for a consideration moving
6 from the defendant. Such a dismissal operates as a complete
7 bar to any future action and has the same legal effect as a
8 common law *petrahit*.”). Second, as for SPAVI, it purchased
9 intellectual property, and did not assume any contracts
10 binding Cinco. Thus, the claim that SPAVI is bound to good
11 faith and fair dealing as a “successor in interest has no basis”
12 and can be resolved a matter of law,, given that this simply
13 requires interpretation of contracts binding Cinco (of which
14 there are no one) to which SPAVI assumed (also, null set).
15 Put simply – SPAVI is not a successor in interest to any
16 contract of Cinco, and by purchasing the intellectual property
17 of Cinco, it was only bound to those contracts involving the
18 use and licensing of the brand – none of which are at issue in
19 this case.

20 v. PCJV USA Parties’ Supporting Evidence: the following
21 categories, which are defined above, capture the key phases
22 and supporting evidence: Superseding Joint Venture (2008–
23 2010), Alternative Licensing Arrangements and Ongoing
24 Ratification (2011–2012), Formalization and Modification of
25 the Joint Venture (2012), LA Group Partnership Agreement
26 and Evolving Business Dynamics and Terms (2013–2018),
27 Dispute, Litigation, and State Court Proceedings (2018 and
28

Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.

vi. SPAVI Parties' Supporting Evidence: Each of the agreements included in the trial exhibits and testimony of Mr. Magsaysay, Mr. Koren, and Ms. Victor – all of which will establish that none of the Counterclaimants – PCJV, PCIT, LA Group LLC, GK Capital, NKM, or Koren have any contract to which Cinco has privity; the settlement agreement (Trial Exhibit 1172) and evidence of the dismissals with prejudice, as well as the pleadings in the prior case establishing what has been dismissed, and subject to retraxit.

g. Element No. 3: Cinco or SPAVI engaged in conduct that breached the duty of good faith and fair dealing.

i. Disputed Status of Element 3: The parties dispute this element is satisfied.

ii. Nature of Dispute: factual and legal.

iii. PCJV USA Parties' Position Statement: Plaintiff's position statement does not address a legal issue concerning this element. To the extent Plaintiff's position statement addresses element 1, PCJV USA Parties incorporate their respective response here.

iv. Plaintiff's Position Statement: The only contracts that have been identified as being "breached" are the unsigned licensee agreement and the AJVA. Neither document binds Cinco – indeed, that the AJVA constitutes an agreement to agree and not a contract has already been adjudicated and decided as

1 law of the case. It is impossible to know what the specific
2 contract is at issue here. To the extent any actual contract
3 ever existed between Cinco and these parties, the only one
4 that is possible is the Settlement Agreement and
5 corresponding agreement selling PCJV equity to GKK
6 Capital. (Trial Exhibit 1176.) Because Cinco has never been
7 a party to any other contract with any of the Counterclaim
8 Defendants, that is the only one that could possibly be at
9 issue, but Defendants refuse to acknowledge this. In the
10 absence of a contract binding Cinco, it is possible that
11 Counterclaimants are seeking to allege that Cinco is an alter
12 ego of Potato Corner International or others, however,
13 PCJV and the other counterclaimants already alleged this --
14 alter ego status of Cinco -- and after a negotiated settlement,
15 dismissed this claim with prejudice. They may not raise it
16 now. *See, e.g., Torrey Pines Bank v. Superior Ct.*, 216 Cal.
17 App. 3d 813, 820 (Ct. App. 1989) (holding that “a dismissal
18 with prejudice is the maiden name for a common law
19 retraxit,” and “[a] retraxit is equivalent to a judgment on the
20 merits and as such bars further litigation on the same subject
21 matter between the parties.”); *Datta v. Staab*, 173 Cal. App.
22 2d 613, 620—21 (1959) (“The effect of a dismissal with
23 prejudice is quite different, however, when it is executed and
24 filed in return for a consideration moving from the defendant.
25 Such a dismissal operates as a complete bar to any future
26 action and has the same legal effect as a common law
27 petraxit.”). Second, as for SPAVI, it purchased intellectual
28

property, and did not assume any contracts binding Cinco. Thus, the claim that SPAVI is bound to good faith and fair dealing as a “successor in interest has no basis” and can be resolved a matter of law,, given that this simply requires interpretation of contracts binding Cinco (of which there are no one) to which SPAVI assumed (also, null set). Put simply – SPAVI is not a successor in interest to any contract of Cinco, and by purchasing the intellectual property of Cinco, it was only bound to those contracts involving the use and licensing of the brand– none of which are at issue in this case.

v. PCJV USA Parties’ Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties’ Tortious Conduct.

vi. SPAVI Parties’ Supporting Evidence: The absence of evidence that Cinco was a party to, or breached, any contract with any of the Counterclaimants is the supporting evidence. Plaintiff’s Position Statement: In addition to the absence of any contract binding Cinco or SPAVI – thus there could be no corresponding breach of the covenant of good faith and fair dealing – the evidence of Koren’s behavior during the license negotiations, particularly with SPAVI, lead to the conclusion that it was he that caused the negotiations to fail, not anyone else. Testimony of SPAVI (Gregorio and Tan) as well as their correspondence with Koren (Trial Exhibits 20-31) will establish this. The only contracts that have been identified as being “breached” are

1 the unsigned licensee agreement and the AJVA. Neither
2 document binds Cinco – indeed, that the AJVA constitutes an
3 agreement to agree and not a contract has already been
4 adjudicated and decided as law of the case. It is impossible to
5 know what the specific contract is at issue here. To the extent
6 any actual contract ever existed between Cinco and these
7 parties, the only one that is possible is the Settlement
8 Agreement and corresponding agreement selling PCJV
9 equity to GKK Capital. (Trial Exhibit 1176.) I acknowledge
10 has never been a party to any other contract with any of the
11 Counterclaim Defendants, which is the only one that could
12 possibly be at issue, but Defendants refuse to acknowledge
13 this.

14 h. Element No. 4: Counterclaimants were harmed.

- 15 i. Disputed Status of Element 4: The parties dispute this
16 element is satisfied.
- 17 ii. Nature of Dispute: legal.
- 18 iii. PCJV Usa Parties' Position Statement: Plaintiff's position
19 statement does not address a legal issue concerning this
20 element. To the extent Plaintiff's position statement
21 addresses element 1, PCJV USA Parties incorporate their
22 respective response here.
- 23 iv. Plaintiff's Position Statement: Cinco breached no contract.
24 The only contracts that have been identified as being
25 "breached" are the unsigned licensee agreement and the
26 AJVA. Neither document binds Cinco – indeed, that the
27 AJVA constitutes an agreement to agree and not a contract
28

1 has already been adjudicated and decided as law of the case.
2 It is impossible to know what the specific contract is at issue
3 here. To the extent any actual contract ever existed between
4 Cinco and these parties, the only one that is possible is the
5 Settlement Agreement and corresponding agreement selling
6 PCJV equity to GKK Capital. (Trial Exhibit 1176.) Because
7 Cinco has never been a party to any other contract with any
8 of the Counterclaim Defendants, that is the only one that
9 could possibly be at issue, but Defendants refuse to
10 acknowledge this.

11 **i. Cause of Action No. 11: Quantum Meruit.**

12 i. Element No. 1: any of the SPAVI Parties requested, by words
13 or conduct, that any one of the PCJV USA Parties perform
14 services for the benefit of any of the SPAVI Parties.

15 i. Disputed Status of Element 1: The parties dispute that
16 this element is satisfied.

17 ii. Nature of Dispute: Factual

18 iii. PCJV USA Parties' Supporting Evidence: the following
19 categories, which are defined above, capture the key
20 phases and supporting evidence: Superseding Joint
21 Venture (2008–2010), Alternative Licensing
22 Arrangements and Ongoing Ratification (2011–2012),
23 Formalization and Modification of the Joint Venture
24 (2012), LA Group Partnership Agreement and Evolving
25 Business Dynamics and Terms (2013–2018), Dispute,
26 Litigation, and State Court Proceedings (2018 and
27 Beyond), and Ongoing Annual Ratification and
28

Regulatory Compliance.

iv. SPAVI and Cinco's Supporting Evidence: the lack of evidence of this will suffice. Testimony of Gregorio will confirm as will testimony of Koren.

ii. Element No. 2: any one of the PCJV USA Parties performed the services as requested.

i. Disputed Status of Element 2: The parties dispute that this element is satisfied.

ii. Nature of Dispute: factual

iii. PCJV USA Parties' Supporting Evidence: the following categories, which are defined above, capture the key phases and supporting evidence: Superseding Joint Venture (2008–2010), Alternative Licensing Arrangements and Ongoing Ratification (2011–2012), Formalization and Modification of the Joint Venture (2012), LA Group Partnership Agreement and Evolving Business Dynamics and Terms (2013–2018), Dispute, Litigation, and State Court Proceedings (2018 and Beyond), Ongoing Annual Ratification and Regulatory Compliance, and SPAVI Parties' Tortious Conduct.

iv. SPAVI and Cinco's Supporting Evidence: the lack of evidence of this will suffice. Testimony of Gregorio will confirm as will testimony of Koren.

iii. Element No. 3: the requesting SPAVI Party/Parties has not paid any one of the PCJV USA Parties for the services.

i. Disputed Status of Element 3: The parties dispute that this element is satisfied.

- ii. Nature of Dispute: Factual
- iii. PCJV USA Parties' Supporting Evidence: the following category, which is defined above, captures the key phase and supporting evidence: SPAVI Parties' Tortious Conduct.
- iv. SPAVI and Cinco's Supporting Evidence: the lack of evidence of this will suffice. Testimony of Gregorio will confirm as will testimony of Koren.
- iv. Element No. 4: the reasonable value of the services that were provided.
 - i. Disputed Status of Element 4: The parties dispute that this element is satisfied.
 - ii. Nature of Dispute: Factual
 - iii. PCJV USA Parties' Supporting Evidence: documents and testimony including and related to the following: (1) PCJV USA Parties' financial records; (2) PCJV USA Parties' historical growth; and (3) PCJV USA Parties' franchisee agreements and communications.
 - iv. SPAVI and Cinco's Supporting Evidence: there is no evidence of this.

III. SPAVI Parties' Affirmative Defenses

- 1) **Affirmative Defense No. 1**: Laches (asserted by Counter Defendant and Third Party Defendants as to all claims alleged against them)
 - a. Element No. 1: A Delay in asserting a claim.
 - i. This element is disputed
 - ii. Nature of Dispute: Factual

- 1 iii. Plaintiff's Position Statement: Laches is an affirmative
2 defense.
- 3 iv. Defendants' Position Statement: Laches is an equitable
4 claim to be tried by the Court. *Ultimax Cement Mfg.*
5 *Corp. v. CTS Cement Mfg. Corp.*, 856 F.Supp. 2d 1136,
6 1151 (2012).
- 7 v. Plaintiff's Supporting Evidence: Both the JVA and
8 AJVA contain an agreement to agree on a Master License
9 Agreement. However, there was never a written license
10 agreement executed between Counterclaimants and
11 Cinco. Counterclaimants entered into a negotiation
12 process with Cinco, prior to SPAVI's acquisition of the
13 Potato Corner brand and all of the Potato Corner
14 Intellectual Property from Cinco, for the terms of a
15 license to use the Potato Corner Intellectual Property.
16 These negotiations began before SPAVI purchased the
17 rights to the Potato Corner IP. So, Counterclaimants have
18 been aware of the lack of ownership rights in the Potato
19 Corner Intellectual Property and the non-existence of a
20 written agreement. Then, between December of 2021
21 through 2024, the months immediately preceding this
22 action, SPAVI engaged in a good faith and exhaustive
23 attempt to negotiate the terms of a written license with
24 PCJV as well. Never once did Counterclaimants state that
25 they had ownership rights to the Potato Corner
26 Intellectual Property, and SPAVI relied on that
27 representation because had one been expressed, that
28

1 would have been a dispute as to the ownership rights to
2 which SPAVI would have filed this lawsuit sooner.
3 Additional evidence includes: Notarized Deeds signed by
4 seller and buyer; USPTO filings including Registrations
5 and Assignments; Testimony of Gregorio (Plaintiff's
6 CEO), Magsaysay (Cinco's CEO), Koren, Ybanez
7 (Plaintiff's General Counsel), Tan (Director responsible
8 for international franchising); and emails and
9 correspondence during the negotiation of the terms of the
10 license agreement.

11 vi. PCJV USA's Parties Supporting Evidence: SPAVI parties
12 have not articulated their defense beyond what is included
13 in their Answers until 7am on August 12, 2025. *See* n. 1.
14 As it is articulated in the Answers, PCJV Parties cannot
15 determine the factual basis for the defense. As such, the
16 out of an abundance of caution, PCJV Parties incorporate
17 by reference all of the evidence cited in support of their
18 causes of action

19 b. Element No. 2: acquiescence by Counterclaim Defendants or Third
20 Party Defendants or their suffering of prejudice, which can include
21 detrimental reliance on the status quo, loss of evidence, or other
22 circumstances that make it inequitable to allow the claimants to
23 assert their claim after the delay.

24 i. This element is disputes

25 ii. Nature of Dispute: Legal and factual

26 iii. Plaintiff's Position Statement: Laches is an affirmative
27 defense.
28

iv. PCJV USA Parties' Position Statement: PCJV USA

Parties' Position Statement: Laches is an equitable claim to be tried by the Court. *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*, 856 F.Supp. 2d 1136, 1151 (2012). "A defendant must demonstrate three elements to successfully assert laches defense: (1) delay in asserting a right or claim; (2) the delay was not reasonable or excusable; and (3) prejudice to the party against whom laches is asserted." *Magic Kitchen LLC v. Good Things Internat., Ltd.*, 153 Cal. App. 4th 1144, 1157 (2007). SPAVI Parties' statement of what it needs to prove here as an element to laches is incorrect

v. Plaintiff's Supporting Evidence: Both the JVA and AJVA contain an agreement to agree on a Master License Agreement. However, there was never a written license agreement executed between Counterclaimants and Cinco. Counterclaimants entered into a negotiation process with Cinco, prior to SPAVI's acquisition of the Potato Corner brand and all of the Potato Corner Intellectual Property from Cinco, for the terms of a license to use the Potato Corner Intellectual Property. These negotiations began in [DATE]. So, as of [DATE], Counterclaimants have been aware of the lack of ownership rights in the Potato Corner Intellectual Property and the non-existence of a written agreement. Then, between December of 2021 through 2024, the months immediately preceding this action, SPAVI

engaged in a good faith and exhaustive attempt to negotiate the terms of a written license with PCJV as well. Never once did Counterclaimants state that they had ownership rights to the Potato Corner Intellectual Property, and SPAVI relied on that representation because had one been expressed, that would have been a dispute as to the ownership rights to which SPAVI would have filed this lawsuit sooner. Additional evidence includes: Notarized Deeds signed by seller and buyer; USPTO filings including Registrations and Assignments; Testimony of Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO), Koren, Ybanez (Plaintiff's General Counsel), Tan (Director responsible for international franchising); and emails and correspondence during the negotiation of the terms of the license agreement.

vi. PCJV USA Parties' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers until 7am on August 12, 2025. *See* n. 1. As it is articulated in the Answers, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action.

2) **Affirmative Defense No. 2**: Consent (asserted by Counterclaim Defendant and Third Party Defendants as to all claims alleged against them)

a. Element No. 1: One or more of the Counterclaimants or Third Party

1 Plaintiffs consented to the acts about which they complain.

2 i. This element is disputed.

3 ii. Nature of Dispute: factual

4 iii. Plaintiff's Position Statement: The elements are taken
5 from CACI 1721

6 iv. Plaintiff's Supporting Evidence: Both the JVA and AJVA
7 contain an agreement to agree on a Master License
8 Agreement. However, there was never a written license
9 agreement executed between Counterclaimants and
10 Cinco. Counterclaimants entered into a negotiation
11 process with Cinco, prior to SPAVI's acquisition of the
12 Potato Corner brand and all of the Potato Corner
13 Intellectual Property from Cinco, for the terms of a
14 license to use the Potato Corner Intellectual Property.
15 These negotiations began in [DATE]. So, as of [DATE],
16 Counterclaimants have been aware of the lack of
17 ownership rights in the Potato Corner Intellectual
18 Property and the non-existence of a written agreement.
19 Then, between December of 2021 through 2024, the
20 months immediately preceding this action, SPAVI
21 engaged in a good faith and exhaustive attempt to
22 negotiate the terms of a written license with PCJV as
23 well. Never once did Counterclaimants state that they had
24 ownership rights to the Potato Corner Intellectual
25 Property, and SPAVI relied on that representation because
26 had one been expressed, that would have been a dispute
27 as to the ownership rights to which SPAVI would have
28

1 filed this lawsuit sooner. Additional evidence includes:
2 Notarized Deeds signed by seller and buyer; USPTO
3 filings including Registrations and Assignments;
4 Testimony of Gregorio (Plaintiff's CEO), Magsaysay
5 (Cinco's CEO), Koren, Ybanez (Plaintiff's General
6 Counsel), Tan (Director responsible for international
7 franchising); and emails and correspondence during the
8 negotiation of the terms of the license agreement.

9 v. PCJV USA Parties' Supporting Evidence: SPAVI parties
10 have not articulated their defense beyond what is included
11 in their Answers until 7am on August 12, 2025. *See* n. 1.
12 As it is articulated in the Answers, PCJV Parties cannot
13 determine the factual basis for the defense. As such, the
14 out of an abundance of caution, PCJV Parties incorporate
15 by reference all of the evidence cited in support of their
16 causes of action.

17 3) **Affirmative Defense No. 3**: Estoppel (asserted by Counterclaim
18 Defendant and Third Party Defendants as to all claims alleged against
19 them)

20 a. Element No. 1: A representation or concealment of material facts;

- 21 i. This element is disputed
22 ii. Nature of Dispute: Legal and factual
23 iii. SPAVI and Cinco's Position Statement: Estoppel is an
24 affirmative defense
25 iv. PCJV USA Parties Position: PCJV USA Parties' Position
26 Statement: Equitable estoppel is an equitable claim to be
27 tried by the Court. *Ultimax Cement Mfg. Corp. v. CTS*
28

1 *Cement Mfg. Corp.*, 856 F.Supp. 2d 1136, 1151 (2012).

2 v. Plaintiff's Supporting Evidence: Counterclaimants have

3 no evidence of a written license to use SPAVI's Potato

4 Corner Intellectual Property, and, as such, its rights (that

5 it has sold to its franchisees) derive from what is, at best,

6 a terminable at will, fully revocable license because

7 Defendants were nonetheless operating Potato Corner

8 locations, as if a written license existed. See *Pogrebnoy v.*

9 *Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d

10 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th

11 Cir. 2018) ("[A]n implied license, like any other contract,

12 is terminable at the will of either party if it is not for a

13 specified term."). After SPAVI's acquisition of the Potato

14 Corner brand, it became the licensor of the Potato Corner

15 Intellectual Property. Between December of 2021 through

16 2024, the months immediately preceding this action,

17 SPAVI engaged in a good faith and exhaustive attempt to

18 negotiate the terms of a written license with PCJV.

19 Defendant Guy Koren engaged and participated in this

20 negotiation, but was unwilling to agree to any minimally

21 commercially viable licensing terms. Never once did

22 Counterclaimants state that they had ownership rights to

23 the Potato Corner Intellectual Property, and SPAVI relied

24 on that representation. Additional evidence includes:

25 Testimony of Gregorio (Plaintiff's CEO), Magsaysay

26 (Cinco's CEO), Koren, Ybanez (Plaintiff's General

27 Counsel), Tan (Director responsible for international

28

franchising); and emails and correspondence during the negotiation of the terms of the license agreement.

vi. PCJV USA Parties' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers. As it is articulated there, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action.

b. Element 2: Made with knowledge, actual or virtual, of the facts;

i. This element is disputed

ii. Nature of Dispute: Legal and factual

iii. Plaintiff's Position Statement: Estoppel is an affirmative defense

iv. PCJV USA Parties' Position Statement: Equitable estoppel is an equitable claim to be tried by the Court.

Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp., 856 F.Supp. 2d 1136, 1151 (2012).

v. Plaintiff's Supporting Evidence: Plaintiff's Supporting Evidence: Counterclaimants have no evidence of a written license to use SPAVI's Potato Corner Intellectual Property, and, as such, its rights (that it has sold to its franchisees) derive from what is, at best, a terminable at will, fully revocable license because Defendants were nonetheless operating Potato Corner locations, as if a written license existed. *See Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070

(C.D. Cal. 2017), aff'd, 742 F. App'x 291 (9th Cir. 2018) (“[A]n implied license, like any other contract, is terminable at the will of either party if it is not for a specified term.”). After SPAVI’s acquisition of the Potato Corner brand, it became the licensor of the Potato Corner Intellectual Property. Between December of 2021 through 2024, the months immediately preceding this action, SPAVI engaged in a good faith and exhaustive attempt to negotiate the terms of a written license with PCJV. Defendant Guy Koren engaged and participated in this negotiation, but was unwilling to agree to any minimally commercially viable licensing terms. Never once did Counterclaimants state that they had ownership rights to the Potato Corner Intellectual Property, and SPAVI relied on that representation. Additional evidence includes: Testimony of Gregorio (Plaintiff’s CEO), Magsaysay (Cinco’s CEO), Koren, Ybanez (Plaintiff’s General Counsel), Tan (Director responsible for international franchising); and emails and correspondence during the negotiation of the terms of the license agreement

vi. PCJV USA Parties’ Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers. As it is articulated there, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action

1 c. Element 3: To a party ignorant, actually, and permissibly, of the
2 truth;

3 i. This element is disputed

4 ii. Nature of Dispute: legal and factual

5 iii. Plaintiff's position statement: Estoppel is an affirmative
6 defense

7 iv. PCJV USA Parties' Position Statement: Equitable
8 estoppel is an equitable claim to be tried by the Court.
9 *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*,
10 856 F.Supp. 2d 1136, 1151 (2012).

11 v. Plaintiff's Supporting Evidence: Plaintiff's Supporting
12 Evidence: Counterclaimants have no evidence of a written
13 license to use SPAVI's Potato Corner Intellectual
14 Property, and, as such, its rights (that it has sold to its
15 franchisees) derive from what is, at best, a terminable at
16 will, fully revocable license because Defendants were
17 nonetheless operating Potato Corner locations, as if a
18 written license existed. See *Pogrebnoy v. Russian*
19 *Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070
20 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018)
21 ("[A]n implied license, like any other contract, is
22 terminable at the will of either party if it is not for a
23 specified term."). After SPAVI's acquisition of the Potato
24 Corner brand, it became the licensor of the Potato Corner
25 Intellectual Property. Between December of 2021 through
26 2024, the months immediately preceding this action,
27 SPAVI engaged in a good faith and exhaustive attempt to
28

1 negotiate the terms of a written license with PCJV.

2 Defendant Guy Koren engaged and participated in this
3 negotiation, but was unwilling to agree to any minimally
4 commercially viable licensing terms. Never once did
5 Counterclaimants state that they had ownership rights to
6 the Potato Corner Intellectual Property, and SPAVI relied
7 on that representation. Instead, Counterclaimant engaged
8 in the negotiation process. Additional evidence includes:
9 Testimony of Gregorio (Plaintiff's CEO), Magsaysay
10 (Cinco's CEO), Koren, Ybanez (Plaintiff's General
11 Counsel), Tan (Director responsible for international
12 franchising); and emails and correspondence during the
13 negotiation of the terms of the license agreement

14 vi. PCJV USA Parties' Supporting Evidence: SPAVI parties
15 have not articulated their defense beyond what is included
16 in their Answers. As it is articulated there, PCJV Parties
17 cannot determine the factual basis for the defense. As
18 such, the out of an abundance of caution, PCJV Parties
19 incorporate by reference all of the evidence cited in
20 support of their causes of action

21 d. Element 4: With the intention, actual or virtual, that the ignorant
22 party act on it; and

- 23 i. This element is disputed
24 ii. Nature of Dispute: legal and factual
25 iii. Plaintiff's position statement: Estoppel is an affirmative
26 defense
27 iv. PCJV USA Parties' Position Statement: Equitable
28

1 estoppel is an equitable claim to be tried by the Court.

2 *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*,
3 856 F.Supp. 2d 1136, 1151 (2012).

4 v. Plaintiff's Supporting Evidence: Never once did
5 Counterclaimants state that they had ownership rights to
6 the Potato Corner Intellectual Property. Instead,
7 Defendant Guy Koren engaged and participated in the
8 negotiation of the license to use the Potato Corner
9 Intellectual Property, with the intent of having SPAVI
10 relied on that representation that Counterclaimant did not
11 have a license. Additional evidence includes: Testimony
12 of Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO),
13 Koren, Ybanez (Plaintiff's General Counsel), Tan
14 (Director responsible for international franchising); and
15 emails and correspondence during the negotiation of the
16 terms of the license agreement

17 vi. PCJV USA Parties' Supporting Evidence: SPAVI parties
18 have not articulated their defense beyond what is included
19 in their Answers. As it is articulated there, PCJV Parties
20 cannot determine the factual basis for the defense. As
21 such, the out of an abundance of caution, PCJV Parties
22 incorporate by reference all of the evidence cited in
23 support of their causes of action.

24 e. Element 5: That party was induced to act on it and was harmed.

- 25 i. This element is disputed
26 ii. Nature of Dispute: legal and factual
27 iii. Plaintiff's position statement: Estoppel is an affirmative
28

1 defense

2 iv. PCJV USA Parties' Position Statement: Equitable

3 estoppel is an equitable claim to be tried by the Court.

4 *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*,
5 856 F.Supp. 2d 1136, 1151 (2012).

6 v. Plaintiff's Supporting Evidence: Never once did

7 Counterclaimants state that they had ownership rights to
8 the Potato Corner Intellectual Property. Instead,

9 Defendant Guy Koren engaged and participated in the
10 negotiation of the license to use the Potato Corner

11 Intellectual Property, with the intent of having SPAVI

12 relied on that representation that Counterclaimant did not
13 have a license. Guy Koren refused to, engage in

14 reasonable and good faith negotiation. Instead, he only

15 offered royalty rates and license fees that were more than
16 90% below what Koren had agreed to be reasonable

17 licensing fees over a decade prior. Koren also repeatedly

18 disengaged from the negotiation process, but still was

19 utilizing the Potato Corner Intellectual Property. In the

20 three months prior to the termination of the licensing

21 agreement, Koren had gone radio silent, leading SPAVI to

22 believe that it no longer was interested in negotiating a

23 license. Therefore, SPAVI had no option, but to terminate

24 Counterclaimants license of the Potato Corner Intellectual

25 Property. Additional evidence includes: Testimony of

26 Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO),

27 Koren, Ybanez (Plaintiff's General Counsel), Tan
28

(Director responsible for international franchising); and emails and correspondence during the negotiation of the terms of the license agreement

- vi. PCJV USA Parties' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers. As it is articulated there, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action.

4) **Affirmative Defense No. 4** Failure to Mitigate Damages (asserted by Counterclaim Defendant and Third Party Defendants as to all claims alleged against them)

- a. Element No. 1: That the party seeking the damage award failed to use reasonable efforts to mitigate damages

- i. This element is disputed
- ii. Nature of Dispute: factual
- iii. Plaintiff's Supporting Evidence: Both the JVA and AJVA contain an agreement to agree on a Master License Agreement. There was never a written license agreement between Counterclaimants and counter defendants or third party defendants for the use of the Potato Corner Intellectual Property. Counterclaimants entered into a negotiation process with Cinco, prior to SPAVI's acquisition of the Potato Corner brand and all of the Potato Corner Intellectual Property from Cinco, for the terms of a license to use the Potato Corner Intellectual

1 Property. These negotiations began before SPAVI
2 purchased the rights to the Potato Corner IP. So,
3 Counterclaimants have been aware of the lack of
4 ownership rights in the Potato Corner Intellectual
5 Property and the non-existence of a written agreement.
6 Then, between December of 2021 through 2024, the
7 months immediately preceding the filing of this action,
8 SPAVI engaged in a good faith and exhaustive attempt to
9 negotiate the terms of a written license with
10 Counterclaimants as well. Never once did
11 Counterclaimants state that they had ownership rights to
12 the Potato Corner Intellectual Property, and SPAVI relied
13 on that representation because had one been expressed,
14 that would have been a dispute as to the ownership rights
15 to which SPAVI would have filed this lawsuit sooner.
16 Moreover, Guy Koren refused to engage in reasonable
17 and good faith negotiation, which would have led to the
18 execution of a licensing agreement. Instead, he only
19 offered royalty rates and license fees that were more than
20 90% below what Koren had agreed to be reasonable
21 licensing fees over a decade prior. Koren also repeatedly
22 disengaged from the negotiation process, but still was
23 utilizing the Potato Corner Intellectual Property. In the
24 three months prior to the termination of the licensing
25 agreement, Koren had gone radio silent, leading SPAVI to
26 believe that it no longer was interested in negotiating a
27 license. Therefore, SPAVI had no option, but to terminate
28

Counterclaimants license to use the Potato Corner Intellectual Property. Additional evidence includes: Notarized Deeds signed by seller and buyer; USPTO filings including Registrations and Assignments; Testimony of Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO), Koren, Ybanez (Plaintiff's General Counsel), Tan (Director responsible for international franchising); May 31, 2024 Termination Letter; and emails and correspondence during the negotiation of the terms of the license agreement.

iv. Defendants' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers until 7am on August 12, 2025. *See* n. 1. As it is articulated in the Answers, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action

b. Element No. 2: the amount, if any, by which damages have been mitigated

- i. This element is disputed
- ii. Nature of Dispute: factual
- iii. Plaintiff's Supporting Evidence: Had Counterclaimants negotiated in good faith, SPAVI would have executed a license agreement and not terminated the licensing agreement. The amount of alleged damage resulting from the termination of the license agreement could have been

mitigated. Additional evidence includes: Amended Joint Venture Agreement and Joint Venture Agreement; Testimony of Koren, Plaintiff executives Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's COO charged with US operations), Tan (Director responsible for international franchising); Emails and correspondence with SPAVI, Koren, and PCJV relating to negotiations of a licensing agreement for the use of the Potato Corner Intellectual Property; Financial documents of Counterclaimants; May 31, 2024 Termination Letter

iv. Defendants' Supporting Evidence: SPAVI parties have not articulated their defense beyond what is included in their Answers until 7am on August 12, 2025. *See n. 1.* As it is articulated in the Answers, PCJV Parties cannot determine the factual basis for the defense. As such, the out of an abundance of caution, PCJV Parties incorporate by reference all of the evidence cited in support of their causes of action

5) **Affirmative Defense No. 5:** Immunity (asserted by SPAVI as to all claims alleged against it)

a. **Element No. 1** – That Counterclaim Defendant had a legitimate economic interest and thus shielded from liability in pursuit of its own lawful business interests

i. This element is disputed

ii. Nature of Dispute: Legal and factual

iii. **PCJV USA Parties' Position Statement:** PCJV USA

Parties cannot articulate a response to this affirmative

1 defense because SPAVI Parties did not provide their
2 statement of what the applicable elements are or their
3 positions regarding those elements. They have otherwise
4 not articulated how this affirmative defense applies
5 beyond their Answers.

6 iv. Plaintiff's Supporting Evidence: In December 2021,
7 SPAVI entered into a transaction to acquire the Potato
8 Corner Intellectual Property, including the Potato Corner
9 Standard Characters Mark and the Potato Corner Logo
10 Mark, and all of the rights thereto, from Cinco. That
11 transaction closed during the first half of 2022. As such,
12 SPAVI had an economic interest in the Potato Corner
13 Intellectual Property. Additional evidence includes:
14 Notarized Deeds signed by seller and buyer; USPTO
15 filings including Registrations and Assignments,
16 testimony of Gregorio (Plaintiff's CEO), Magsaysay
17 (Cinco's CEO), Tan (Director responsible for
18 international franchising)

19 v. PCJV USA Parties' Supporting Evidence: SPAVI parties
20 have not articulated their defense beyond what is included
21 in their Answers. As it is articulated there, PCJV Parties
22 cannot determine the factual basis for the defense. As
23 such, the out of an abundance of caution, PCJV Parties
24 incorporate by reference all of the evidence cited in
25 support of their causes of action.

26 6) **Affirmative Defense No. 6**: Privilege (asserted by SPAVI as to all claims
27 alleged against it)
28

1 a. Element No. 1 – That Counterclaim Defendant had a legitimate
2 economic interest

3 i. This element is disputed

4 ii. Nature of Dispute: legal and factual

5 iii. Defendants' Position Statement: SPAVI parties have not
6 articulated their defense beyond what is included in their
7 Answers. *See* n. 1. As it is articulated in the Answers,
8 PCJV Parties cannot determine the legal basis for the
9 defense

10 iv. Plaintiff's Supporting Evidence: In December 2021,
11 SPAVI entered into a transaction to acquire the Potato
12 Corner Intellectual Property, including the Potato Corner
13 Standard Characters Mark and the Potato Corner Logo
14 Mark, and all of the rights thereto, from Cinco. That
15 transaction closed during the first half of 2022. As such,
16 SPAVI had an economic interest in the Potato Corner
17 Intellectual Property. Additional evidence includes:
18 Notarized Deeds signed by seller and buyer; USPTO
19 filings including Registrations and Assignments,
20 testimony of Gregorio (Plaintiff's CEO), Magsaysay
21 (Cinco's CEO), Tan (Director responsible for
22 international franchising)

23 v. Defendants' Supporting Evidence: SPAVI parties have
24 not articulated their defense beyond what is included in
25 their Answers until 7am on August 12, 2025. *See* n. 1. As
26 it is articulated in the Answers, PCJV Parties cannot
27 determine the factual basis for the defense. As such, the
28

1 out of an abundance of caution, PCJV Parties incorporate
2 by reference all of the evidence cited in support of their
3 causes of action

4 b. Element No. 2 – That Counterclaim Defendant acted only to protect its
5 own economic interest.

6 i. This element is disputed

7 ii. Nature of Dispute: legal and factual

8 iii. Defendants' Position Statement: SPAVI parties have not
9 articulated their defense beyond what is included in their
10 Answers. *See* n. 1. As it is articulated in the Answers,
11 PCJV Parties cannot determine the legal basis for the
12 defense.

13 iv. Plaintiff's Supporting Evidence: Counterclaimant have no
14 evidence of a written license to use SPAVI's Potato
15 Corner Intellectual Property, and, as such, its rights (that
16 it has sold to its franchisees) derive from what is, at best,
17 a terminable at will, fully revocable license because
18 Defendants were nonetheless operating Potato Corner
19 locations, as if a written license existed. *See Pogrebnoy v.*
20 *Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d
21 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th
22 Cir. 2018) ("[A]n implied license, like any other contract,
23 is terminable at the will of either party if it is not for a
24 specified term."). After SPAVI's acquisition of the Potato
25 Corner brand, it became the licensor of the Potato Corner
26 Intellectual Property. Between December of 2021 through
27 2024, the months immediately preceding this action,
28

1 SPAVI engaged in a good faith and exhaustive attempt to
2 negotiate the terms of a written license with PCJV.
3 Defendant Guy Koren engaged and participated in this
4 negotiation, but was unwilling to agree to any minimally
5 commercially viable licensing terms. Therefore, Plaintiff
6 had no option to terminate the license of the Potato
7 Corner Intellectual Property. Additional evidence
8 includes: Testimony of Koren, Plaintiff executives
9 Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's
10 COO charged with US operations), Tan (Director
11 responsible for international franchising), Magsaysay
12 (Cinco's CEO); Emails and correspondence with SPAVI,
13 Koren, and PCJV relating to negotiations of a licensing
14 agreement for the use of the Potato Corner Intellectual
15 Property; Amended Joint Venture Agreement; Franchise
16 Agreements; FDDs; Trial Exhibit 29 (May 31, 2024
17 Termination)

18 v. Defendants' Supporting Evidence: SPAVI parties have
19 not articulated their defense beyond what is included in
20 their Answers until 7am on August 12, 2025. *See* n. 1. As
21 it is articulated in the Answers, PCJV Parties cannot
22 determine the factual basis for the defense. As such, the
23 out of an abundance of caution, PCJV Parties incorporate
24 by reference all of the evidence cited in support of their
25 causes of action.

26 c. Element No. 3 – That Counterclaim Defendant acted reasonably and in
27 good faith to protect it.
28

- i. This element is disputed
- ii. Nature of Dispute: legal and factual
- iii. Defendants' Position Statement: SPAVI parties have not articulated their defense beyond what is included in their Answers. *See* n. 1. As it is articulated in the Answers, PCJV Parties cannot determine the legal basis for the defense.
- iv. Plaintiff's Supporting Evidence: Counterclaimant have no evidence of a written license to use SPAVI's Potato Corner Intellectual Property, and, as such, its rights (that it has sold to its franchisees) derive from what is, at best, a terminable at will, fully revocable license because Defendants were nonetheless operating Potato Corner locations, as if a written license existed. *See Pogrebnoy v. Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th Cir. 2018) ("[A]n implied license, like any other contract, is terminable at the will of either party if it is not for a specified term."). After SPAVI's acquisition of the Potato Corner brand, it became the licensor of the Potato Corner Intellectual Property. Between December of 2021 through 2024, the months immediately preceding this action, SPAVI engaged in a good faith and exhaustive attempt to negotiate the terms of a written license with PCJV. Defendant Guy Koren engaged and participated in this negotiation, but was unwilling to agree to any minimally commercially viable licensing terms. Therefore, Plaintiff

1 had no option to terminate the license of the Potato
2 Corner Intellectual Property. Additional evidence
3 includes: Testimony of Koren, Plaintiff executives
4 Gregorio (Plaintiff's CEO), Concepcion (Plaintiff's
5 COO charged with US operations), Tan (Director
6 responsible for international franchising), Magsaysay
7 (Cinco's CEO); Emails and correspondence with SPAVI,
8 Koren, and PCJV relating to negotiations of a licensing
9 agreement for the use of the Potato Corner Intellectual
10 Property; Amended Joint Venture Agreement; Franchise
11 Agreements; FDDs; Trial Exhibit 29 (May 31, 2024
12 Termination)

13 v. Defendants' Supporting Evidence: SPAVI parties have
14 not articulated their defense beyond what is included in
15 their Answers until 7am on August 12, 2025. *See* n. 1. As
16 it is articulated in the Answers, PCJV Parties cannot
17 determine the factual basis for the defense. As such, the
18 out of an abundance of caution, PCJV Parties incorporate
19 by reference all of the evidence cited in support of their
20 causes of action.

21 7) **Affirmative Defense No. 7:** Unclean Hands (asserted by Counterclaim
22 Defendant and Third Party Defendants as to all claims alleged against
23 them)

24 a. **Element No. 1:** Counterclaimant engaged in inequitable and/or
25 unethical behavior that bars it from seeking relief

26 i. This element is disputed

27 ii. Nature of Dispute: factual
28

- 1 iii. Plaintiff's Supporting Evidence: Counterclaimants have at
2 best, a terminable at will, fully revocable license because
3 Defendants were nonetheless operating Potato Corner
4 locations, as if a written license existed. *See Pogrebnoy v.*
5 *Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d
6 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th
7 Cir. 2018) (“[A]n implied license, like any other contract,
8 is terminable at the will of either party if it is not for a
9 specified term.”). Despite using the Potato Corner
10 Intellectual Property for over a decade, Counterclaimants
11 have never once paid a single cent of a licensing for its
12 use to Cinco nor SPAVI. Counterclaimants have used
13 Cinco's, and after the asset purchase, SPAVI's trademark
14 without compensation to either party. Additional evidence
15 includes: Financial statements of Counterclaimants
16 evidence that no licensing fees have ever been paid;
17 Notarized Deeds signed by seller and buyer; USPTO
18 filings including Registrations and Assignments;
19 Testimony of Gregorio (Plaintiff's CEO), Magsaysay
20 (Cinco's CEO), Koren, Ybanez (Plaintiff's General
21 Counsel), Tan (Director responsible for international
22 franchising), Concepcion (Plaintiff's COO charged with
23 US operations); emails and correspondence with Cinco,
24 SPAVI, Koren, and PCJV relating to negotiations of a
25 licensing agreement
- 26 iv. Defendants' Supporting Evidence: SPAVI parties have
27 not articulated their defense beyond what is included in
28

1 their Answers until 7am on August 12, 2025. *See* n. 1. As
2 it is articulated in the Answers, PCJV Parties cannot
3 determine the factual basis for the defense. As such, the
4 out of an abundance of caution, PCJV Parties incorporate
5 by reference all of the evidence cited in support of their
6 causes of action. Also, the state court preliminary
7 injunction (holding that Cinco Corporation was not likely
8 to prevail on prior claims of wrongdoing); confidential
9 settlement communications do not support allegations;
10 Cinco Corporation's settlement and release of prior
11 allegations of wrongdoing.

12 8) **Affirmative Defense No. 8:** Waiver (asserted by Counterclaim Defendant
13 and Third Party Defendants as to all claims alleged against them)

14 a. Element No. 1: Through implied and/or express conduct,
15 Counterclaimants knowingly waived a valid right, privilege,
16 advantage, or benefit allegedly conferred upon it and its attempt to
17 enforce that right, privilege, advantage, or benefit is thus barred.

18 i. This element is disputed

19 ii. Nature of Dispute: factual

20 vii. Plaintiff's Supporting Evidence: Both the JVA and AJVA
21 contain an agreement to agree on a Master License
22 Agreement. There was never a written license agreement
23 between Counterclaimants and counter defendants or third
24 party defendants. Counterclaimant entered into a
25 negotiation process with Cinco, prior to SPAVI's
26 acquisition of the Potato Corner brand and all of the
27 Potato Corner Intellectual Property from Cinco, for the
28

1 terms of a license to use the Potato Corner Intellectual
2 Property. These negotiations began before SPAVI
3 purchased the rights to the Potato Corner IP. So,
4 Counterclaimants have been aware of the lack of
5 ownership rights in the Potato Corner Intellectual
6 Property and the non-existence of a written agreement.
7 Then, between December of 2021 through 2024, the
8 months immediately preceding the filing of this action,
9 SPAVI engaged in a good faith and exhaustive attempt to
10 negotiate the terms of a written license with
11 Counterclaimants as well. Never once did
12 Counterclaimants state that they had ownership rights to
13 the Potato Corner Intellectual Property, and SPAVI relied
14 on that representation because had one been expressed,
15 that would have been a dispute as to the ownership rights
16 to which SPAVI would have filed this lawsuit sooner.
17 Instead, Counterclaimants and Counter Defendants
18 continued to negotiate the terms of a license to use the
19 Potato Corner Intellectual Property. Additional evidence
20 includes: Notarized Deeds signed by seller and buyer;
21 USPTO filings including Registrations and Assignments;
22 Testimony of Gregorio (Plaintiff's CEO), Magsaysay
23 (Cinco's CEO), Koren, Ybanez (Plaintiff's General
24 Counsel), Tan (Director responsible for international
25 franchising); and emails and correspondence during the
26 negotiation of the terms of the license agreement.

27 iii. Defendants' Supporting Evidence: SPAVI parties have
28

1 not articulated their defense beyond what is included in
2 their Answers until 7am on August 12, 2025. *See* n. 1. As
3 it is articulated in the Answers, PCJV Parties cannot
4 determine the factual basis for the defense. As such, the
5 out of an abundance of caution, PCJV Parties incorporate
6 by reference all of the evidence cited in support of their
7 causes of action. The state court preliminary injunction
8 (enjoining Cinco Corporation from interfering with
9 PCJV's President's control over Potato Corner in the
10 United States and communicating with its franchisees);
11 confidential settlement communications do not support
12 any waiver, as Defendants never waived any rights but
13 were trying to settle disputes; Cinco Corporation's
14 settlement and release of prior allegations and transfer of
15 the very interests, rights and obligations over which the
16 parties are now litigating.

17 9) **Affirmative Defense No. 9:** Comparative Fault (asserted by
18 Counterclaim Defendant SPAVI as to the negligent interference with
19 prospective economic relations claim)

20 a. Element No. 1: That Counterclaimant was negligent

- 21 i. This element is disputed
22 ii. Nature of Dispute: factual
23 iii. **Plaintiff's Supporting Evidence:** Both the JVA and AJVA
24 contain an agreement to agree on a Master License
25 Agreement. As such, there was no written license
26 agreement. Counterclaimant entered into a negotiation
27 process with Cinco, prior to SPAVI's acquisition of the
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1 Potato Corner brand and all of the Potato Corner
2 Intellectual Property from Cinco, for the terms of a
3 license to use the Potato Corner Intellectual Property.
4 These negotiations began before SPAVI purchased the
5 rights to the Potato Corner IP. So, Counterclaimants have
6 been aware of the lack of ownership rights in the Potato
7 Corner Intellectual Property and the non-existence of a
8 written agreement. Then, between December of 2021
9 through 2024, the months immediately preceding this
10 action, SPAVI engaged in a good faith and exhaustive
11 attempt to negotiate the terms of a written license with
12 PCJV as well. Never once did Counterclaimants state that
13 they had ownership rights to the Potato Corner
14 Intellectual Property, and SPAVI relied on that
15 representation because had one been expressed, that
16 would have been a dispute as to the ownership rights to
17 which SPAVI would have filed this lawsuit sooner.
18 Moreover, Guy Koren could have, but refused to, engage
19 in reasonable and good faith negotiation. Instead, he only
20 offered royalty rates and license fees that were more than
21 90% below what Koren had agreed to be reasonable
22 licensing fees over a decade prior. Koren also repeatedly
23 disengaged from the negotiation process, but still was
24 utilizing the Potato Corner Intellectual Property.
25 Additional evidence includes: Notarized Deeds signed by
26 seller and buyer; USPTO filings including Registrations
27 and Assignments; Testimony of Gregorio (Plaintiff's
28

1 CEO), Magsaysay (Cinco's CEO), Koren, Ybanez
2 (Plaintiff's General Counsel), Tan (Director responsible
3 for international franchising); and emails and
4 correspondence during the negotiation of the terms of the
5 license agreement.

6 iv. Defendants' Supporting Evidence: SPAVI parties have
7 not articulated their defense beyond what is included in
8 their Answers until 7am on August 12, 2025. *See* n. 1. As
9 it is articulated in the Answers, PCJV Parties cannot
10 determine the factual basis for the defense. As such, the
11 out of an abundance of caution, PCJV Parties incorporate
12 by reference all of the evidence cited in support of their
13 causes of action. The state court preliminary injunction
14 (enjoining Cinco Corporation from interfering with
15 PCJV's President's control over Potato Corner in the
16 United States and communicating with its franchisees); at
17 all relevant times Defendants exercised control over
18 Potato Corner in the United States and did not change the
19 status quo between the parties, including in dealings with
20 Plaintiff and Plaintiff's predecessor.

21 b. Element No. 2: That Counterclaimant's negligence was a substantial
22 factor in causing its harm.

- 23 i. This element is disputed
24 ii. Nature of Dispute: factual
25 iii. Plaintiff's Supporting Evidence: Guy Koren could have,
26 but refused to, engage in reasonable and good faith
27 negotiation. Instead, he only offered royalty rates and
28

1 license fees that were more than 90% below what Koren
2 had agreed to be reasonable licensing fees over a decade
3 prior. Koren also repeatedly disengaged from the
4 negotiation process, but still was utilizing the Potato
5 Corner Intellectual Property. In light of the two year
6 negotiation process that went nowhere, and
7 Counterclaimant no furnishing any consideration
8 whatsoever in exchange for the use of the Potato Corner
9 Intellectual Property, SPAVI concluded that it exhausted
10 all efforts to negotiate a license agreement with
11 Counterclaimants. As such, SPAVI had no choice by to
12 terminate Counterclaimants licensing agreement.
13 Additional supporting evidence includes: Notarized
14 Deeds signed by seller and buyer; USPTO filings
15 including Registrations and Assignments; Testimony of
16 Gregorio (Plaintiff's CEO), Magsaysay (Cinco's CEO),
17 Koren, Ybanez (Plaintiff's General Counsel), Tan
18 (Director responsible for international franchising); May
19 31, 2024 Termination Letter; and emails and
20 correspondence during the negotiation of the terms of the
21 license agreement.

22 iv. Defendants' Supporting Evidence: SPAVI parties have
23 not articulated their defense beyond what is included in
24 their Answers until 7am on August 12, 2025. *See* n. 1. As
25 it is articulated in the Answers, PCJV Parties cannot
26 determine the factual basis for the defense. As such, the
27 out of an abundance of caution, PCJV Parties incorporate
28

by reference all of the evidence cited in support of their causes of action. The state court preliminary injunction (enjoining Cinco Corporation from interfering with PCJV's President's control over Potato Corner in the United States and communicating with its franchisees); at all relevant times Defendants exercised control over Potato Corner in the United States and did not change the status quo between the parties, including in dealings with Plaintiff and Plaintiff's predecessor

10) **Affirmative Defense No. 10:** Lack or Inadequacy of Consideration (asserted by Counterclaim Defendant and Third Party Defendants as to all claims alleged against them)

a. **Element No. 1:** Counterclaimant has failed or refused to provide anything of value in exchange for the use of SPAVI's license to use the Potato Corner Intellectual Property

i. This element is disputed

ii. Nature of Dispute: factual

iii. **Plaintiff's Supporting Evidence:** Despite using the Potato Corner Intellectual Property for over a decade, Counterclaimants have never once paid a single cent of a licensing fee for its use to Cinco nor SPAVI. Counterclaimants have used Cinco's, and after the asset purchase, SPAVI's trademark without compensation to either party. Additional evidence includes: Financial statements of Counterclaimants evidence that no licensing fees have ever been paid; Notarized Deeds signed by seller and buyer; USPTO filings including Registrations

1 and Assignments; Testimony of Gregorio (Plaintiff's
2 CEO), Magsaysay (Cinco's CEO), Koren, Ybanez
3 (Plaintiff's General Counsel), Tan (Director responsible
4 for international franchising), Concepcion (Plaintiff's
5 COO charged with US operations); JVA and AJVA;
6 emails and correspondence with Cinco, SPAVI, Koren,
7 and PCJV relating to negotiations of a licensing
8 agreement

9 iv. Defendants' Supporting Evidence: SPAVI parties have
10 not articulated their defense beyond what is included in
11 their Answers until 7am on August 12, 2025. *See* n. 1. As
12 it is articulated in the Answers, PCJV Parties cannot
13 determine the factual basis for the defense. As such, the
14 out of an abundance of caution, PCJV Parties incorporate
15 by reference all of the evidence cited in support of their
16 causes of action

17 11) **Affirmative Defense No. 11**: Abandonment or Mutual Recession of
18 Contract (asserted by Counterclaim Defendant and Third Party
19 Defendants as to all claims alleged against them)

20 a. **Element No. 1**: Counterclaimants license to use the Potato Corner
21 Intellectual Property was effectively terminated by mutual consent or
22 that Counterclaimants actions led SPAVI to believe that it was
23 abandoned.

24 i. This element is disputed.

25 ii. Nature of Dispute: factual

26 iii. **Plaintiff's Supporting Evidence**: Counterclaimants have
27 no evidence of a written license to use SPAVI's Potato
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1 Corner Intellectual Property, and, as such, its rights (that
2 it has sold to its franchisees) derive from what is, at best,
3 a terminable at will, fully revocable license because
4 Defendants were nonetheless operating Potato Corner
5 locations, as if a written license existed. *See Pogrebnoy v.*
6 *Russian Newspaper Distribution, Inc.*, 289 F. Supp. 3d
7 1061, 1070 (C.D. Cal. 2017), *aff'd*, 742 F. App'x 291 (9th
8 Cir. 2018) (“[A]n implied license, like any other contract,
9 is terminable at the will of either party if it is not for a
10 specified term.”). After SPAVI’s acquisition of the Potato
11 Corner brand, it became the licensor of the Potato Corner
12 Intellectual Property. Between December of 2021 through
13 2024, the months immediately preceding this action,
14 SPAVI engaged in a good faith and exhaustive attempt to
15 negotiate the terms of a written license with PCJV.
16 Defendant Guy Koren engaged and participated in this
17 negotiation, but was unwilling to agree to any minimally
18 commercially viable licensing terms. Moreover, Guy
19 Koren refused to, engage in reasonable and good faith
20 negotiation. Instead, he only offered royalty rates and
21 license fees that were more than 90% below what Koren
22 had agreed to be reasonable licensing fees over a decade
23 prior. Koren also repeatedly disengaged from the
24 negotiation process, but still was utilizing the Potato
25 Corner Intellectual Property. In the three months prior to
26 the termination of the licensing agreement, Koren had
27 gone radio silent, leading SPAVI to believe that it no
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1 longer was interested in negotiating a license. Therefore,
2 SPAVI had no option, but to terminate Coutnerclaimants
3 license of the Potato Corner Intellectual Property.
4 Additional evidence includes: Testimony of Koren,
5 Plaintiff executives Gregorio (Plaintiff's CEO),
6 Concepcion (Plaintiff's COO charged with US
7 operations), Tan (Director responsible for international
8 franchising), Magsaysay (Cinco's CEO); Emails and
9 correspondence with SPAVI, Koren, and PCJV relating to
10 negotiations of a licensing agreement for the use of the
11 Potato Corner Intellectual Property; Amended Joint
12 Venture Agreement; Franchise Agreements; FDDs; Trial
13 Exhibit 29 (May 31, 2024 Termination)

14 iv. Defendants' Supporting Evidence: SPAVI parties have
15 not articulated their defense beyond what is included in
16 their Answers until 7am on August 12, 2025. *See n. 1.* As
17 it is articulated in the Answers, PCJV Parties cannot
18 determine the factual basis for the defense. As such, the
19 out of an abundance of caution, PCJV Parties incorporate
20 by reference all of the evidence cited in support of their
21 causes of action. Defendants settled with Plaintiff's
22 predecessor and acquired all of Plaintiff's predecessor's
23 interests in PCJV and all "attached" rights; it did not
24 abandon any rights or obligations under PCJV USA,
25 LLC's governing documents.
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27
28

1 **IV. Adjudication of Causes of Action, Counter Claims, Third Party Claims,**
2 **and Affirmative Defenses Not to be Decided by a Jury**

3 The parties request adjudication of the following causes of action, counter
4 claims, third party claims, and affirmative defenses in the following manner and at
5 the following time:

6 1) PCJV USA Parties request the Court to adjudicate PCJV USA Parties'
7 following causes of action at the conclusion of trial: (1) Declaratory
8 Relief; and (2) Violations of Business & Professions Code §§ 17200, et
9 *seq*

10 2) PCJV USA Parties request the Court to adjudicate PCJV USA Parties'
11 following affirmative defenses at the conclusion of trial: (1) failure to
12 state a claim; (2) consent/acquiescence, ratification, promissory estoppel,
13 equitable estoppel, and judicial estoppel; (3) unclean hands; (4) laches, (5)
14 fraud on USPTO, (6) authorized use, (7) public availability of trade
15 secrets, and (8) lack of at will license agreement

16 The parties abandoned the following claims:

17 1) PCJV USA Parties abandon their Accounting cause of action.

18 2) SPAVI Parties are no longer pursuing the claim for unregistered
19 trademarks.

1 Dated: August 22, 2025

/s/ Matthew Follett
Michael D. Murphy
Matthew Follett
Jessica Nwasike
Fox Rothschild LLP
*Attorneys for Plaintiff and
Counterclaim Defendant, and Third
Party Defendants*

7
8 DATED: August 22, 2025

BLANK ROME LLP

9
10 By: /s/ Todd M. Malynn

Todd M. Malynn
Arash Beral
Jamison T. Gilmore
Attorneys for Defendants, Counterclaimants,
and Third Party Plaintiffs PCJV USA, LLC,
PCI TRADING LLC, POTATO CORNER,
LA GROUP, LLC, GK CAPITAL GROUP,
LLC, NKM CAPITAL GROUP, LLC and
GUY KOREN, and Defendants J & K
AMERICANA, LLC, J&K LAKEWOOD,
LLC, J&K OAKRIDGE, LLC, J&K
VALLEY FAIR, LLC, J & K ONTARIO,
LLC, J&K PC TRUCKS, LLC, HLK
MILPITAS, LLC, and GK CERRITOS,
LLC

ATTESTATION OF E-FILED SIGNATURE

Pursuant to Civil Local Rule 5-4.3.4(a)(2)(i), I, Todd M. Malynn, hereby attest that I have obtained concurrence in the filing of this document from the other signatories to this document. I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

DATED: August 22, 2025

BLANK ROME LLP

By: Todd M. Malynn

Todd M. Malynn

Arash Beral

Jamison T. Gilmore

Attorneys for Defendants, Counterclaimants,
and Third Party Plaintiffs PCJV USA, LLC,
PCI TRADING LLC, POTATO CORNER,
LA GROUP, LLC, GK CAPITAL GROUP,
LLC, NKM CAPITAL GROUP, LLC and
GUY KOREN, and Defendants J & K
AMERICANA, LLC, J&K LAKEWOOD,
LLC, J&K OAKRIDGE, LLC, J&K
VALLEY FAIR, LLC, J & K ONTARIO,
LLC, J&K PC TRUCKS, LLC, HLK
MILPITAS, LLC, and GK CERRITOS,
LLC

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 22, 2025, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court's Electronic Case Filing (ECF) system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on August 22, 2025.

By: /s/AJ Cruickshank